RECEIVED
MAY 20 2011
U.S.D.C. S.D. N.Y.
CASHIERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation

No. 00 Civ. 1898
MDL No. 1358 (SAS) (DCF)
M21-88
Master File No. 1:00-1898
No. 03 Civ. 10055

VILLAGE OF HEMPSTEAD,

Plaintiff,

-against-

AGIP INC., et al.,

Defendants.
---X
CP SERVICE STATION OPERATING CORP. and TARTAN OIL CORP.,

Third-Party Plaintiffs,

-against-

NORTHVILLE INDUSTRIES CORP.,

Third-Party Defendant.
---X

NORTHVILLE INDUSTRIES CORP.,

Fourth-Party Plaintiff,

-against-

LEON PETROLEUM, LLC, LEON HOLDINGS, LLC, ALAM PETROLEUM INC., MOHAMMAD NAWAZ, ASU GAS STOP, INC., IBRAHIM AYKANAT, OFIER SERVICE STATION, INC., CAMSON EQUITIES, LLC

Fourth-Party Defendants.
---X

FOURTH-PARTY COMPLAINT

Third-Party Defendant/Fourth-Party Plaintiff Northville Industries Corp. ("Northville"), by its attorneys, Herzfeld & Rubin, P.C., as and for its Fourth-Party Complaint, alleges the following:

Jurisdiction and Venue

1. The United States District Court for the Southern District of New York has determined jurisdiction and venue of the original action.

2. This Court is the proper venue for this fourth-party action pursuant to Fed. R. Civ. P. 14.

Parties

3. At all relevant times, Northville was and is a corporation organized and existing under the laws of the State of New York with offices located at 25 Melville Park Road, Melville, New York.

4. At all relevant times, fourth-party defendant Leon Petroleum, LLC ("Leon Petroleum") was and is a limited liability company organized and existing under the laws of the State of New York with offices at 532 Broad Hollow Road, Melville, New York.

5. Leon Petroleum owned, operated, controlled, was affiliated with, was interrelated with, and/or was an alter ego of, third-party plaintiffs Tartan Oil Corp. ("Tartan") and CP Service Station Operating Corp. ("CP").

6. Leon Petroleum is the successor in interest to Tartan and CP.

7. Leon Petroleum has agreed and/or contracted to defend and indemnify Tartan and CP with respect to the claims and damages alleged in this action.

8. In addition to independent liability alleged below, Leon Petroleum is liable and/or legally responsible for any wrongful conduct and/or legal culpability of Tartan and CP with respect to the claims and damages alleged in this action.

9. At all relevant times, fourth-party defendant Leon Holdings, LLC ("Leon Holdings") was and is a limited liability company organized and existing under the laws of the State of New York with offices at 532 Broad Hollow Road, Melville, New York.

10. Leon Holdings is the successor in interest of defendants/third-party plaintiffs Tartan and CP, and of Leon Petroleum.

11. Leon Holdings owned, operated, controlled, was affiliated with, was interrelated with, and/or was an alter ego of, Tartan, CP and Leon Petroleum.

12. In addition to independent liability alleged below, Leon Holdings is liable and/or legally responsible for the wrongful conduct and/or legal culpability of Tartan, CP and Leon Petroleum with respect to the claims and damages alleged in this action.

13. At all relevant times, fourth-party defendant Alam Petroleum, Inc. ("Alam Petroleum") was and is a corporation organized and existing under the laws of the State of New York with offices at 345 Old Country Road, Carle Place, New York.

14. At all relevant times, fourth-party defendant Mohammad Nawaz ("Nawaz") was and is a resident of the State of New York.

15. At all relevant times, fourth-party defendant ASU Gas Stop, Inc. ("ASU Gas Stop") was and is a corporation organized and existing under the laws of the State of New York with offices at 2 Jericho Turnpike, Mineola, New York.

16. At all relevant times, fourth-party defendant Ibrahim Aykanat ("Aykanat") was and is a resident of the State of New York.

17. At all relevant times, fourth-party defendant Ofier Service Station, Inc. ("Ofier") was and is a corporation organized and existing under the laws of the State of New York with offices located at 323 Clinton Street, Hempstead, New York.

18. At all relevant times, fourth-party defendant Camson Equities LLC ("Camson") was and is a limited liability company organized and existing under the laws of the State of New York with offices located at 1160 Park Avenue, Suite 7B, New York, New York.

Factual Background

19. This multi-district litigation involves claims of the alleged contamination or threatened contamination of plaintiffs' drinking water supply wells by the gasoline additive Methyl Tertiary Butyl Ether ("MTBE").

20. Plaintiff asserts causes of action against defendants alleging violation of the New York State Navigation Law ("Navigation Law"), strict products liability, public nuisance, private nuisance, failure to warn, negligence, deceptive business acts and practices, negligence per se and trespass.

21. Plaintiff alleges it is a municipal entity that, among other things, provides drinking water to residents.

22. Plaintiff has alleged that defendants caused or contributed to the release of MTBE into the groundwater which contaminated and/or threatens contamination to certain water supply wells. A copy of plaintiff's Complaint is annexed hereto as Exhibit "A."

23. On or about July 30, 2011, Northville was impleaded in this action as a third-party defendant by defendants Tartan and CP. The Third-Party Complaint alleges claims sounding in violation of the New York Navigation Law, declaratory judgment, indemnification, contribution and breach of contract.

24. Northville has denied these claims and maintains that it did not cause, and is not legally responsible for, any contamination or damages alleged in the Complaint and Third-Party Complaint.

25. Tartan and CP served an Amended Third-Party Complaint on March 21, 2011. The Amended Third-Party Complaint alleges claims sounding in violation of the New York Navigation Law, declaratory judgment, indemnification, contribution and breach of contract. A copy of the Amended Third-Party Complaint is annexed hereto as Exhibit "B."

26. Northville denied these claims in its Answer to the Amended Third-Party Complaint, a copy of which is annexed hereto as Exhibit "C."

27. The fourth-party defendants herein have caused, contributed to, permitted and/or are legally responsible for, releases of petroleum products including gasoline containing MTBE into the ground and groundwater.

28. Northville denies that plaintiff and defendants/third-party plaintiffs sustained any damages for which they are entitled to recover. However, in the event any damages alleged in the Complaint and/or Amended Third-Party Complaint are assessed against Northville, such damages were caused by, and/or are the responsibility of, the fourth-party defendants herein.

Culpable/Wrongful Conduct of the Fourth-Party Defendants

29. At all relevant times, fourth-party defendant Leon Petroleum was and is the owner of property located at 91 Jericho Turnpike, Mineola, New York ("91 Jericho Turnpike").

30. At all relevant times, Leon Petroleum owned, leased and/or operated a gasoline service station located at 91 Jericho Turnpike (the "service station").

31. At all relevant times, Leon Petroleum was and is the owner and/or operator of underground storage tanks and their piping and related components (collectively, "USTs") located at, on or under 91 Jericho Turnpike.

32. At all relevant times, petroleum products, including gasoline containing MTBE, were stored, sold and dispensed at 91 Jericho Turnpike.

33. At all relevant times, Leon Petroleum distributed, sold, and/or caused to be distributed and sold, gasoline containing MTBE which was stored, sold and dispensed at 91 Jericho Turnpike.

34. At all relevant times, Leon Petroleum used and operated, and/or knew, permitted and/or facilitated 91 Jericho Turnpike to be used and operated, as a service station which stored, sold and dispensed gasoline containing MTBE.

35. Prior to, on and after May 3, 1994, discharges of petroleum products, including gasoline containing MTBE, into the ground and groundwater, occurred at 91 Jericho Turnpike.

36. On May 3, 1994, the New York State Department of Environmental Conservation ("NYSDEC") opened spill file number 94-01618 as a result of the discharges of petroleum products, including gasoline containing MTBE, at 91 Jericho Turnpike.

37. Prior to, on and after March 15, 1995, additional discharges of petroleum products, including gasoline containing MTBE, into the ground and groundwater, occurred at 91 Jericho Turnpike.

38. On March 15, 1995, the NYSDEC opened spill file number 94-16461 as a result of the discharges of petroleum, including gasoline containing MTBE, at 91 Jericho Turnpike.

39. Prior to, on and after October 2, 2000, additional discharges of petroleum products, including gasoline containing MTBE, into the ground and groundwater, occurred at 91 Jericho Turnpike.

40. On October 2, 2000, the NYSDEC opened spill file number 00-07794 as a result of the discharges of petroleum products, including gasoline containing MTBE, at 91 Jericho Turnpike.

41. Upon information and belief, other and/or continuing discharges of petroleum products, including gasoline containing MTBE, into the ground and groundwater, occurred and are occurring at 91 Jericho Turnpike.

42. Leon Petroleum is a discharger within the meaning of the New York Navigation Law §181 et seq. and/or is responsible for the release of gasoline containing MTBE into the ground and groundwater and any damages arising therefrom.

43. Leon Petroleum failed to adequately remediate the discharges of petroleum products, including gasoline containing MTBE, at 91 Jericho Turnpike.

44. In addition to independent liability, Leon Petroleum is liable and/or legally responsible for the wrongful conduct and/or legal culpability of Tartan and CP with respect to the claims and damages alleged in this action.

45. At all relevant times, fourth-party defendant Leon Holdings was and is the owner of 91 Jericho Turnpike.

46. At all relevant times, Leon Holdings owned, leased and/or operated the service station at 91 Jericho Turnpike.

47. At all relevant times, Leon Holdings owned and/or operated the USTs located at, on or under 91 Jericho Turnpike.

48. At all relevant times, Leon Holdings distributed, sold, and/or caused to be distributed and sold, gasoline containing MTBE which was stored, sold and dispensed at 91 Jericho Turnpike.

49. At all relevant times, Leon Holdings used and operated, and/or knew, permitted and/or facilitated 91 Jericho Turnpike to be used and operated, as a service station which stored, sold and dispensed gasoline containing MTBE.

50. Leon Holdings is a discharger within the meaning of New York Navigation Law § 181 et seq. and/or is responsible for the release of gasoline containing MTBE into the ground and groundwater and any damages arising therefrom.

51. In addition to independent liability, Leon Holdings is liable for the wrongful conduct and/or legal culpability of Tartan, CP and Leon Petroleum with respect to the claims and damages alleged in this action.

52. At all relevant times, Leon Petroleum owned, leased, occupied and/or operated the property located at 345 Old Country Road, Carle Place, New York (alleged in the Amended Third-Party Complaint as the "CP Site").

53. Leon Petroleum owned, leased and/or operated a gasoline service station at the CP Site (the "service station").

54. Leon Petroleum was the owner, operator and/or lessee of USTs located at, on and under the CP Site.

55. During Leon Petroleum's ownership, lease and/or operation of the CP Site, petroleum products, including gasoline containing MTBE, were stored, sold and dispensed at the CP Site.

56. Leon Petroleum distributed, sold, and/or caused to be distributed and sold, gasoline containing MTBE which was stored, sold and dispensed at the CP Site.

57. Leon Petroleum used and operated, and/or intended, permitted and facilitated the CP Site to be used and operated, as a gasoline service station which stored, sold and dispensed gasoline containing MTBE.

58. During Leon Petroleum's ownership, lease and/or operation of the CP Site, the service station and/or the USTs at the CP Site, discharges of petroleum products, including gasoline containing MTBE, into the ground and groundwater, occurred at the CP Site.

59. On November 24, 1999, the NYSDEC opened spill file number 99-25412 as a result of the discharges of petroleum products, including gasoline containing MTBE, which occurred at the CP Site during Leon Petroleum's ownership, lease and/or operation of the CP Site, the service station and/or the USTs at the CP Site.

60. Leon Petroleum is a discharger within the meaning of the New York Navigation Law §181 et seq. and/or is responsible for the release of gasoline containing MTBE into the ground and groundwater and any damages arising therefrom.

61. Leon Petroleum has failed to adequately remediate the discharges of petroleum products, including gasoline containing MTBE, at the CP Site.

62. In addition to independent liability, Leon Petroleum is liable for any wrongful conduct and/or legal culpability of Tartan and CP with respect to the claims and damages alleged in this action.

63. On or about January 25, 2005, Leon Petroleum, LLC assigned its interests in the CP Site, including its lease on the property and ownership of the USTs, to Leon Holdings, LLC.

64. On or about January 25, 2005, Leon Holdings, LLC purchased the CP Site from S&W Holding Co., Inc.

65. Leon Holdings was and is the owner of the CP Site.

66. Leon Holdings owned, leased and/or operated the service station at the CP Site.

67. Leon Holdings owned, leased and/or operated the USTs located at, on and under the CP Site.

68. During Leon Holdings' ownership, lease and/or operation of the CP Site, petroleum products, including gasoline containing MTBE, were stored, sold and dispensed at the CP Site.

69. Leon Holdings distributed, sold, and/or caused to be distributed and sold, gasoline containing MTBE which was stored, sold and dispensed at the CP Site.

70. Leon Holdings used and operated, and/or intended, permitted and facilitated the CP Site to be used and operated, as a gasoline service station which stored, sold and dispensed gasoline containing MTBE.

71. During Leon Holdings' ownership, lease and/or operation of the CP Site, the service station and/or the USTs at the CP Site, discharges of petroleum products,

including gasoline containing MTBE, into the ground and groundwater, occurred at the CP Site.

72. Leon Holdings is a discharger within the meaning of the New York Navigation Law §181 et seq. and/or is responsible for the release of gasoline containing MTBE into the ground and groundwater and any damages arising therefrom.

73. Leon Holdings has failed to adequately remediate the discharges of petroleum products, including gasoline containing MTBE, at the CP Site.

74. In addition to independent liability, Leon Holdings is liable for any wrongful conduct and/or legal culpability of Tartan, CP and Leon Petroleum with respect to the claims and damages alleged in this action.

75. If plaintiff proves that any alleged contamination and/or damages emanated from the CP Site, such contamination and/or damages were caused by and are the responsibility of Tartan, CP, Leon Petroleum and Leon Holdings.

76. At all relevant times, fourth-party defendant Alam Petroleum owned, leased, occupied and/or operated the CP Site.

77. At all relevant times, Alam Petroleum owned, leased and/or operated a gasoline service station at the CP Site.

78. At all relevant times, Alam Petroleum owned, leased and/or operated the USTs located at, on or under the CP Site.

79. During Alam Petroleum's ownership, lease and/or operation of the CP Site, the gasoline service station and/or the USTs at the CP Site, petroleum products, including gasoline containing MTBE, were stored, sold and dispensed at the CP Site.

80. Alam Petroleum distributed, sold, and/or caused to be distributed and sold, gasoline containing MTBE which was stored, sold and dispensed at the CP Site.

81. Alam Petroleum used, operated, and/or intended, permitted and facilitated the CP Site to be used and operated, as a gasoline service station.

82. During Alam Petroleum's ownership, lease and/or operation of the CP Site, the gasoline service station and/or the USTs at the CP Site, discharges of petroleum products, including gasoline containing MTBE, into the ground and groundwater, occurred at the CP Site.

83. Alam Petroleum is a discharger within the meaning of the New York Navigation Law §181 et seq. and/or is responsible for the release of gasoline containing MTBE into the ground and groundwater and any damages arising therefrom.

84. Alam Petroleum has failed to adequately remediate the discharges of petroleum products, including gasoline containing MTBE, at the CP Site.

85. If plaintiff proves that any alleged contamination and/or damages emanated from the CP Site, such contamination and/or damages were caused by and are the responsibility of Alam Petroleum.

86. At all relevant times, fourth-party defendant Nawaz owned, leased, occupied and/or operated the CP Site.

87. At all relevant times, Nawaz owned, leased and/or operated a gasoline service station at the CP Site.

88. At all relevant times, Nawaz owned, leased and/or operated the USTs at, on or under the CP Site.

89. During Nawaz's ownership, lease and/or operation of the CP Site, petroleum products, including gasoline containing MTBE, were stored, sold and dispensed at the CP Site.

90. Nawaz distributed, sold, and/or caused to be distributed and sold, gasoline containing MTBE which was stored, sold and dispensed at the CP Site.

91. Nawaz used and operated, and/or intended, permitted and facilitated the CP Site to be used and operated, as a gasoline service station.

92. During Nawaz's ownership, lease and/or operation of the CP Site, the gasoline service station and/or the USTs at the CP Site, discharges of petroleum products, including gasoline containing MTBE, into the ground and groundwater, occurred at the CP Site.

93. Nawaz is a discharger within the meaning of the New York Navigation Law §181 et seq. and/or is responsible for the release of gasoline containing MTBE into the ground and groundwater and any damages arising therefrom.

94. Nawaz has failed to adequately remediate the discharges of petroleum products, including gasoline containing MTBE, at the CP Site.

95. If plaintiff proves that any alleged contamination and/or damages emanated from the CP Site, such contamination and/or damages were caused by and are the responsibility of Nawaz.

96. On and after December 17, 1987, fourth-party defendant Aykanat owned, leased and/or operated a gasoline service station located at 2 Jericho Turnpike (the "service station").

97. Pursuant to the lease dated December 17, 1987, Aykanat was and is required to defend, indemnify and hold Northville harmless for any claims or lawsuits which result from gasoline or UST leakage or other environmental casualty arising out of Aykanat's use, occupancy, control of and/or activity conducted at, the service station and/or property at 2 Jericho Turnpike.

98. Pursuant to an Agreement, on and after November 15, 1988, fourth-party defendant ASU Gas Stop owned, leased and/or operated the service station at 2 Jericho Turnpike.

99. Aykanat personally guaranteed ASU Gas Stop's performance under said Agreement.

100. Aykanat was and is the principal of ASU Gas Stop.

101. The Agreement required ASU Gas Stop to prevent any contamination, spillage or leakage and required ASU Gas Stop to indemnify and hold harmless Northville for any liability stemming from the sale, storage and/or use of petroleum products at the site, "including liability to any private party or governmental agency."

102. Aykanat leased, used, operated, and was responsible for any maintenance and repairs of, the USTs at 2 Jericho Turnpike.

103. ASU Gas Stop leased, used, operated, and was responsible for any maintenance and repairs of, the USTs at 2 Jericho Turnpike.

104. On or about January 20, 1994, ASU Gas Stop purchased the property at 2 Jericho Turnpike.

105. ASU Gas Stop thereafter assigned its interest in said property to Aykanat, which was and remains the record owner of the property.

106. The Amended Third-Party Complaint alleges that there were three NYSDEC spill files associated with the service station at 2 Jericho Turnpike (bearing spill numbers 90-05159, 91-09761 and 98-25250).

107. The NYSDEC spill files and alleged underlying incidents occurred during Aykanat's and ASU Gas Stop's ownership, lease, occupation, operation and/or control of the property, the service station and/or the USTs at 2 Jericho Turnpike.

108. Northville did not produce, cause, contribute to, and is not responsible for, any discharges of petroleum, including gasoline containing MTBE, at 2 Jericho Turnpike or any alleged damages arising therefrom.

109. The Amended Third-Party Complaint alleges that some of the aforesaid alleged spill incidents involved contamination of groundwater and likely threatened or actually impacted plaintiff's water supply wells.

110. Northville has denied these claims.

111. If it is proved that any alleged discharge of petroleum, including gasoline containing MTBE, occurred at 2 Jericho Turnpike, such discharge(s) and any alleged damages arising therefrom were caused by, and/or are the responsibility of fourth-party defendants Aykanat and ASU Gas Stop.

112. If it is proved that any such discharge(s) occurred at 2 Jericho Turnpike, then Aykanat and ASU Gas Stop are dischargers within the meaning of New York Navigation Law § 181 et seq. and/or are responsible for the release of gasoline containing MTBE and any damages arising therefrom.

113. At all relevant times, fourth-party defendant Ofier owned, leased, occupied and/or operated the property located at 323 Clinton Street, Hempstead New York ("323 Clinton Street").

114. At all relevant times, Ofier owned, leased and/or operated a gasoline service station at 323 Clinton Street (the "service station").

115. At all relevant times, petroleum products, including gasoline containing MTBE, were stored, sold and dispensed at 323 Clinton Street.

116. At all relevant times, Ofier used and operated, and/or knew, permitted and facilitated 323 Clinton Street to be used and operated, as a gasoline service station which stored, sold and dispensed gasoline containing MTBE.

117. At all relevant times, Ofier owned, leased and/or operated the USTs located at, on or under 323 Clinton Street.

118. Ofier distributed, sold, and/or caused to be distributed and sold, gasoline containing MTBE which was stored, sold and dispensed at 323 Clinton Street.

119. Prior to, on, and after March 1, 1990, discharges of petroleum products, including gasoline containing MTBE, into the ground and groundwater, occurred at 323 Clinton Street.

120. On March 1, 1990, a gasoline spill at 323 Clinton Street was reported to the NYSDEC. As a result, the NYSDEC opened spill file number 89-11346, which spill file remains open.

121. The occurrence(s) which is/are the subject of NYSDEC spill file number 89-11346 involved the discharge(s) of petroleum products, including gasoline containing MTBE, into the ground and groundwater at 323 Clinton Street.

122. Upon information and belief, other and/or continuing discharges of petroleum products, including gasoline containing MTBE, occurred and are occurring at 323 Clinton Street.

123. Ofier is a discharger within the meaning of the New York Navigation Law §181 et seq. and/or is responsible for the release of gasoline containing MTBE into the ground and groundwater and any damages arising therefrom.

124. Ofier failed to adequately remediate the discharges of petroleum products, including gasoline containing MTBE, at 323 Clinton Street.

125. At all relevant times, fourth-party defendant Camson owned, leased, occupied and/or operated the property located at 693 Peninsula Blvd., Hempstead, New York ("693 Peninsula").

126. At all relevant times, Camson owned, leased and/or operated a gasoline service station at 693 Peninsula.

127. Camson owned, leased and/or operated the USTs at, on or under 693 Peninsula.

128. Camson used and operated, and/or knew, permitted and facilitated 693 Peninsula to be used and operated, as a gasoline service station which stored, sold and dispenses petroleum products, including gasoline containing MTBE.

129. Prior to, on and after September 16, 1998, discharges of petroleum products, including gasoline containing MTBE, into the ground and groundwater, occurred at 693 Peninsula.

130. On September 16, 1998 NYSDEC opened spill number 98-07395 as a result of the discharges of petroleum products, including gasoline containing MTBE,

which occurred at 693 Peninsula during Camson's ownership and/or operation of a gasoline service station and/or USTs.

131. Upon information and belief, other and/or continuing discharges of petroleum products, including gasoline containing MTBE, occurred and are occurring at 693 Peninsula.

132. Camson is a discharger within the meaning of the New York Navigation Law §181 et seq. and/or is responsible for the release of gasoline containing MTBE into the ground and groundwater and any damages arising therefrom.

133. Camson failed to adequately remediate the discharges of petroleum products, including gasoline containing MTBE, at 693 Peninsula.

FIRST CLAIM FOR RELIEF
(Navigation Law)

134. Fourth-party plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "133" of this Fourth-Party Complaint as if fully set forth herein.

135. During the fourth-party defendants' respective ownership, operation, control and/or lease of the properties, service stations and/or USTs identified above, petroleum products, including gasoline containing MTBE, were released into the ground and groundwater at, under and/or in the vicinity of the respective properties identified above.

136. As a result of these discharges and/or other conduct alleged above, fourth-party defendants are dischargers as defined in New York Navigation Law §181(1) et seq.

137. Each of the fourth-party defendants has failed to adequately remediate the discharges of petroleum, including gasoline containing MTBE, which occurred on, at, under and/or in the vicinity of the respective properties identified above.

138. Navigation Law §181(5) et seq. allows for a private cause of action for strict liability against dischargers by any person who sustains damages as a result of the petroleum discharge.

139. Navigation Law §176(8) et seq. provides that any person responsible for damages from, or cleanup or removal of, discharged petroleum, is entitled to contribution from "any other responsible party."

140. Should Northville be held liable for any damages based upon the claims alleged in the Complaint and/or Amended Third-Party Complaint, such damages were the result of, and/or caused by, the fourth-party defendants' violations of the New York Navigation Law §181 et seq.

141. Northville is entitled to, and hereby demands, indemnification from and judgment over and against the fourth-party defendants, collectively, jointly and severally, for any and all damages which may be assessed against Northville in this action, and/or contribution from and judgment over and against the fourth-party defendants for any damages which may be assessed against it, based upon the fourth-party defendants' shares of the liability and/or responsibility determined against them, together with attorneys' fees and costs.

SECOND CLAIM FOR RELIEF
(Contribution)

142. Fourth-party plaintiff repeats and realleges each and every allegation contained in paragraphs numbered "1" through "141" of this Fourth-Party Complaint as if fully set forth herein.

143. Should Northville be held liable in this action for any damages based upon any claim alleged in the Complaint and/or Amended Third-Party Complaint, such damages were caused by the wrongful acts, omissions, discharges, violations of the New York Navigation Law §181 et seq., strict liability, negligence, breach of duty, private nuisance, public nuisance, deceptive business acts and practices, and/or other wrongful or legally culpable conduct on the part of the fourth-party defendants individually, collectively, jointly and severally.

144. Northville is entitled to, and hereby demands, contribution from and judgment over and against the fourth-party defendants in amounts equal to the fourth-party defendants' shares of the liability and/or responsibility determined against them, together with attorneys' fees and costs.

THIRD CLAIM FOR RELIEF
(Indemnification)

145. Fourth-party plaintiff repeats and realleges each and every allegation contained in paragraphs numbered "1" through "144" of this Fourth-Party Complaint as if fully set forth herein.

146. Should Northville be held liable in this action for any damages based upon any claim alleged in the Complaint and/or Amended Third-Party Complaint, such damages were caused by the wrongful acts, omissions, discharges, violations of the New

York Navigation Law §181 et seq., strict liability, negligence, breach of duty, private nuisance, public nuisance, deceptive business acts and practices, and/or the other wrongful or legally culpable conduct of the fourth-party defendants individually, collectively, jointly and severally.

147. Northville is entitled to, and hereby demands, indemnification from and judgment over and against the fourth-party defendants for the full amount of any judgment rendered against Northville, together with attorneys' fees and costs.

FOURTH CLAIM FOR RELIEF
(Contractual Indemnification as to ASU Gas Stop and Aykanat only)

148. Fourth-party plaintiff repeats and realleges each and every allegation contained in paragraphs numbered "1" through "147" of this Fourth-Party Complaint as if fully set forth herein.

149. Should Northville be held liable for any claims or damages emanating from or relating to the property at 2 Jericho Turnpike, such claims or damages were caused by, and/or are the responsibility of, fourth-party defendants ASU Gas Stop and Aykanat.

150. Pursuant to the contracts described above, ASU Gas Stop and Aykanat are required to defend, indemnify and hold harmless Northville with respect to such claims and damages.

151. Northville is entitled to, and hereby demands, contractual indemnification from and judgment over against ASU Gas Stop and Aykanat for the full amount of any judgment rendered against Northville, including attorneys' fees and defense costs, with respect to this action and any claims or damages emanating from or relating to 2 Jericho Turnpike.

WHEREFORE, fourth-party plaintiff Northville Industries Corp. demands judgment over and against fourth-party defendants Leon Petroleum, LLC, Leon Holdings, LLC, Alam Petroleum, Inc., Mohammad Nawaz, ASU Gas Stop, Inc., Ibrahim Aykanat, Ofier Service Station, Inc., and Camson Equities, LLC on the First, Second, Third and Fourth Claims for Relief herein, for contribution and/or indemnification in amounts to be determined at trial; together with costs, disbursements, attorneys' fees and such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 19, 2011

HERZFELD & RUBIN, P.C.
Attorneys for Third-Party Defendant/
Fourth-Party Plaintiff
Northville Industries Corp.

By: ______________________
Brian T. Carr (BC-2519)
125 Broad Street
New York, New York 10004
Tel: (212) 471-8500

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-- X

In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation

MDL No. 1358 (SAS)

Master File No. 1:00-1898

-- X

-- X

Village of Hempstead,

Plaintiff

No. 03-CV 10055

-against-

COMPLAINT

AGIP INC.,
AMERADA HESS CORPORATION,
AMERICAN AGIP, INC.
AMOCO OIL COMPANY (n/k/a BP PRODUCTS NORTH AMERICA, INC.),
ATLANTIC RICHFIELD COMPANY (individually and d/b/a ARCO PRODUCTS COMPANY, f/k/a ARCO PETROLEUM CO. and a/k/a ARCO),
AWARD PETROLEUM
BARTCO CORP.,
BP AMERICA, INC. (a/k/a BP),
BP AMOCO CHEMICAL COMPANY (individually and f/k/a AMOCO CHEMICAL COMPANY),
BP COMPANY NORTH AMERICA, INC.,
BP CORPORATION AMERICA, INC. (f/k/a BP AMOCO CORPORATION) and BP CORPORATION AMERICA, INC.
BP CORPORATION NORTH AMERICA, INC. (individually and f/k/a BP AMOCO CORPORATION),
BP GLOBAL SPECIAL PRODUCTS (AMERICA), INC.
BP PRODUCTS NORTH AMERICA INC. (individually and f/k/a AMOCO OIL COMPANY),
BP PRODUCTS NORTH AMERICAS, INC. (a/k/a BP MARINE AMERICAS),
CHEVRON TEXACO CORPORATION (individually and as successor-in-interest to CHEVRON CORPORATION

and as successor-in-interest to TEXACO, INC. and
f/k/a CHEVRON USA INC. and f/k/a TEXACO
REFINING AND MARKETING, INC. and f/k/a TEXACO, INC.),
CHEVRON U.S.A., INC., (individually and f/k/a GULF OIL
CORPORATION, d/b/a CHEVRON PRODUCTS COMPANY,
d/b/a CHEVRON CHEMICAL COMPANY),
CITGO PETROLEUM CORPORATION,
CITGO REFINING AND CHEMICALS COMPANY, LP,
COASTAL EAGLE POINT OIL COMPANY,
COASTAL MOBILE REFINING COMPANY, LP,
CONOCOPHILLIPS CO. (individually and as
successor-in-interest to CONOCO INC.
and PHILLIPS PETROLEUM COMPANY, and d/b/a
PHILLIPS 66 COMPANY),
CP SERVICE STATION OPERATING CORP.,
CROWN CENTRAL PETROLEUM CORPORATION,
CROWN OIL COMPANY, INC.
CROWN PETROLEUM, INC.
EL PASO CGP COMPANY (individually and f/k/a THE COASTAL
CORPORATION), EL PASO CGP CORPORATION,
EL PASO CORPORATION (individually and
f/k/a EL PASO ENERGY CORPORATION),
EL PASO MERCHANT ENERGY-PETROLEUM
COMPANY (individually and f/k/a COASTAL REFINING and
MARKETING, INC. and f/k/a COASTAL STATES TRADING,
INC.),
EQUILON ENTERPRISES, LLC (individually and
a/k/a SHELL OIL PRODUCTS US),
EXXON CORPPORATION,
EXXONMOBIL CHEMICAL COMPANY, INC.
(individually and f/k/a MOBIL CHEMICAL COMPANY INC.),
EXXONMOBIL CORPORATION
(individually and as successor-in-interest to EXXON
CORPORATION and as successor-in-interest to MOBIL
CORPORATION and d/b/a EXXONMOBIL REFINING and
SUPPLY COMPANY),
EXXONMOBIL OIL CORPORATION
(individually and f/k/a MOBIL OIL CORPORATION),
FOUR STAR OIL AND GAS COMPANY,
GETTY OIL COMPANY,
GETTY PETROLEUM CORP.,
GETTY PETROLEUM MARKETING, INC.
GETTY PROPERTIES CORPORATION
(individually and f/k/a GETTY PETROLEUM CORP.),
GULF LIMITED LIABILITY PARTNERSHIP,
GULF OIL, LP,

HESS ENERGY, INC.,
KOCH INDUSTRIES, INC.
LEE MILT'S PETROLEUM, INC.
LYONDELL CHEMICAL CO. (individually and f/k/a LYONDELL PETROCHEMICAL COMPANY and f/k/a ARCO CHEMICAL COMPANY),
MARATHON ASHLAND PETROLEUM, LLC,
MARATHON OIL COMPANY (individually and f/k/a USX CORPORATION, f/k/a UNITED STATES STEEL CORPORATION)
MARATHON OIL CORPORATION,
METRO GAS STATIONS,
METRO PETROLEUM CORP.,
MOBIL CORPORATION,
MOTIVA ENTERPRISES, LLC (individually and f/k/a STAR ENTERPRISES LLC),
OCEAN PETROLEUM, INC.
PHILLIPS PETROLEUM COMPANY,
PREMCOR, INC.,
THE PREMCOR REFINING GROUP, INC. (individually and f/k/a CLARK REFINING).
SHELL OIL COMPANY,
SHELL OIL PRODUCTS COMPANY,
SHELL OIL PRODUCTS COMPANY, LLC,
SHELL OIL PRODUCTS US,
SHELL PETROLEUM, INC.,
SHELL TRADING (US) COMPANY (individually and f/k/a EQUIVA TRADING COMPANY and a/k/a STUSCO),
SONO GAS AND OIL LTD.,
SPARTAN OIL CORP.,
SPARTAN PETROLEUM CORP.,
STAR SUPPLY PETROLEUM, INC.,
SUNOCO, INC. (individually and f/k/a SUN OIL COMPANY and f/k/a SUN COMPANY, INC.)
SUNOCO, INC. (R&M), (individually and f/k/a SUN REFINING AND MARKETING COMPANY and f/k/a SUN COMPANY, INC. (R&M))
TARGET PETROLEUM INC.,
TARTAN OIL CORP.
TEXACO, INC.
TEXACO REFINING & MARKETING (EAST), INC.,
TOSCO CORPORATION (individually and a/k/a TOSCO REFINING COMPANY and a/k/a TOSCO MARKETING COMPANY),
UNOCAL CORPORATION (individually and

f/k/a UNION OIL COMPANY OF CALIFORNIA,
ULTRAMAR LUBRICANTS AMERICAN AGIP CO. INC.,
VALERO ENERGY CORPORATION,
VALERO MARKETING AND SUPPLY COMPANY,
VALERO REFINING AND MARKETING COMPANY,
Defendants.
---X

Plaintiff Village of Hempstead ("Plaintiff" or "Hempstead") by and through its attorneys Napoli Kaiser Bern & Associates, LLP, on behalf of itself and all others similarly situated, for its complaint against Defendants alleges:

NATURE OF THE CASE

1. This action was originally filed in New York State Supreme Court, New York County as *Village of Hempstead v. AGIP, et al.,* (NY Co. Index No.: 03117215) and is presently situate in the United States District Court pursuant to a Notice of Removal filed on December 18, 2003 by a number of defendants in the original state court action.

2. Plaintiff brought the underlying state action against Defendants to forestall an ever-increasing water quality emergency and attendant irreparable harm created by contamination of soil and groundwater in Long Island by methyl tertiary butyl ether ("MTBE"). As used herein, the term "MTBE" shall include its degradation products such as tributyl alcohol (TBA).

3. MTBE renders water unfit for human consumption at concentrations as low as 1 part per billion and, in addition to its foul odor, is an animal carcinogen and a mutagen.

4. The Long Island Aquifer System is the sole source of drinking water for hundreds of Long Island water districts, water authorities, water providers, and communities serving over 2,600,000 inhabitants of Nassau and Suffolk Counties.

5. The Long Island Aquifer System is the largest and most important groundwater and supply well resource in New York State, consisting of several porous, water-bearing formations throughout Long Island.

6. Because of the commutation of water within and between water-bearing formations and/or geological strata, drinking water supply wells can draw from a large area of the aquifer. Consequently, any contamination within this "capture zone" can be drawn into drinking water supply wells. Similarly, any contamination that will ultimately end up in the capture zone of the aquifer (e.g., a discharge into the aquifer recharge area) may ultimately be drawn into a drinking water supply well.

7. In 1978, the United States Environmental Protection Agency (hereinafter EPA) designated the Long Island Aquifer System as a "sole source" aquifer.

8. A "sole source" aquifer is an aquifer that is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

9. The Long Island Sole Source Aquifer provides drinking water to Plaintiff.

10. Plaintiff Village of Hempstead is a municipal corporation of the State of New York located in Nassau County, New York, that draws its drinking water from the Long Island Sole Source Aquifer.

PARTIES

Plaintiff

11. Plaintiff is a is a Municipal corporation of the State of New York

12. Plaintiff is authorized to conduct water supply operations and is obligated to provide a constant supply of uncontaminated drinking water to the Village of Hempstead.

Defendants

13. Defendants do business in New York as manufacturers, designers, refiners, formulators, distributors, suppliers, sellers and/or marketers of MTBE and/or gasoline containing MTBE.

14. At all times relevant to this litigation, Defendants engaged in one or more phases of the petroleum business, from the exploration for and extraction of crude oils to the refining and/or the distribution, marketing and retail sale of gasoline, including the design and manufacture of gasoline containing MTBE sold in New York and other states, and the marketing and sale of MTBE.

15. Any and all references to a Defendant or Defendants in this Complaint include any predecessors, successors, parents, subsidiaries, affiliates and divisions of the named Defendants.

16. When the term "Defendants" is used alone, i refers to all Defendants named herein jointly and severally. There are no limitations on liability as set forth in CPLR §1601 applicable to this action in that one or more of the exceptions set forth in CPLR §1602 apply, including, but not limited to, subsections (5) and/or (11).

17. When reference is made to any act or omission of the Defendants, it shall be deemed to mean that the officers, directors, agents, employees, or representatives of the Defendants committed or authorized such act or omission, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of the affairs of Defendants, and did so while acting within the scope of their employment or agency.

18. Agip, Inc. is a domestic corporation with its principal place of business in New York.

19. American Agip, Inc., is a foreign corporation with its principal place of business in New York.

20. Amerada Hess Corporation is a Delaware corporation with its principal place of business at 1185 Avenue of the Americas, 40th Floor, New York, New York 10036, and with a major branch in Woodbridge, New Jersey, doing business in the State of New York.

21. Amoco Oil Company (n/k/a BP Products North America, Inc.) is a foreign corporation with its principal place of business in Chicago, Illinois.

22. Atlantic Richfield Company, individually and doing business as ARCO Products Company (f/k/a Arco Petroleum Co.), and also known as ARCO, a subsidiary of BP America, Inc., is a Delaware corporation with its principal place of business at 333 South Hope Street, Los Angeles, California 90071, doing business in the State of New York.

23. Award Petroleum Inc. is a domestic corporation.

24. Bartco Corp. is a domestic corporation with its principal place of business in Farmingdale, New York.

25. BP America, Inc. (a/k/a BP) is a Delaware corporation with its principal place of business at 150 West Warrenville Road, Naperville, Illinois 60563, doing business in the State of New York.

26. BP Amoco Chemical Company, individually and formerly known as Amoco Chemical Company, a subsidiary of BP Corporation North America, Inc., is a Delaware corporation with its principal place of business at 200 East Randolph Street, Chicago, Illinois 60601, doing business in the State of New York.

27. BP Company North America Inc. is a Delaware corporation with its principal place of business at 200 East Randolph Drive, Chicago, Illinois 60601, doing business in the State of New York.

28. BP Corporation North America Inc., individually and formerly known as BP Amoco Corporation, a subsidiary of BP America, Inc., is an Indiana corporation with its principal place of business 28100 Torch Parkway, Fourth Floor, Warrenville, Illinois 60555, doing business in the State of New York.

29. BP Global Special Products (America), Inc., a subsidiary of BP Corporation North America, Inc., is a Delaware corporation with its principal place of business at 3650 Touhy Avenue, Skokie, Illinois 60076, doing business in the State of New York.

30. BP Products North America, Inc., individually and formerly known as Amoco Oil Company, is a Maryland corporation with its principal place of business at 200 East Randolph Drive, Chicago, Illinois 60601, doing business in the State of New York.

31. BP Products North Americas, Inc. (a/k/a BP Marine Americas) is a Maryland corporation with its principal place of business at 200 Westlake Park Boulevard, Houston, Texas 77079, doing business in the State of New York.

32. ChevronTexaco Corporation, individually and as successor-in-interest to Chevron Corporation and as successor-in-interest to Texaco, Inc., is a Delaware corporation with its principal place of business at 6001 Bollinger Canyon Road, San Ramon, California 94583, doing business in the State of New York.

33. Chevron U.S.A., Inc., individually and formerly known as Gulf Oil Corp. (d/b/a Chevron Products Company, d/b/a Chevron Chemical Company), is a Pennsylvania corporation with its principal place of business at 6001 Bollinger Road, San Ramon, California 94583, doing business in the State of New York.

34. Citgo Petroleum Corporation is a Delaware corporation with its principal place of business at 6100 South Yale Avenue, Tulsa, Oklahoma 74136, doing business in the State of New York.

35. Citgo Refining and Chemical, LP, a subsidiary of Citgo Investment Company, is an Oklahoma limited partnership with its principal place of business at 6100 South Yale Avenue, Tulsa, OK 74136, doing business in the State of New York.

36. Coastal Eagle Point Oil Company is a Delaware corporation with its principal place of business at I-130 & I-295, Westville, New Jersey 08093, doing business in the State of New York.

37. Coastal Mobile Refining Company, a subsidiary of El Paso CGP Company, is a Delaware corporation with its principal place of business at 1001 Louisiana Street, Houston, Texas 77002, doing business in the State of New York.

38. ConocoPhillips Company, individually and as successor-in-interest to Conoco Inc. and Phillips Petroleum Company, and d/b/a Phillips 66 Company, is a Delaware corporation with its principal place of business at 600 North Dairy Ashford Road, Houston, Texas 7709, doing business in the State of New York.

39. CP Service Station Operating Corp. is a domestic corporation with its principal place of business in Melville, New York.

40. Crown Central Petroleum Corporation is a Maryland corporation with its principal place of business at 1 North Charles Street, Baltimore, Maryland 21203, doing business in the State of New York.

41. Crown Oil Company, Inc. is a domestic corporation with its principal place of business in New York, New York.

42. Crown Petroleum, Inc. is a domestic corporation with its principal place of business in Schenectady, New York.

43. El Paso CGP Company individually and formerly known as El Paso Energy Corporation, is a Texas corporation with its principal place of business at 1001 Louisiana Street, Houston, Texas 77002, doing business in the State of New York.

44. El Paso Corporation, individually and formerly known as El Paso Energy Corporation, is a Texas corporation with its principal place of business at 1001 Louisiana Street, Houston, Texas 77002, doing business in the State of New York.

45. El Paso Merchant Energy-Petroleum Company, individually and formerly known as Coastal Refining and Marketing, Inc. and formerly known as Coastal States Trading, Inc., is a Delaware corporation with its principal place of business at 1001 Louisiana Street, Houston, Texas 77002, doing business in the State of New York.

46. Equilon Enterprises, LLC, individually and also known as Shell Oil Products US, is a Delaware limited liability company with its principal place of business at 1100 Louisiana Street, Suite 2200, Houston, Texas 77002, doing business in the State of New York.

47. Exxon Corporation is a domestic corporation with its principal place of business in Irving, Texas.

48. ExxonMobil Chemical Company, Inc., individually and formerly known as Mobil Chemical Company Inc., a subsidiary of ExxonMobil Oil Corporation, is a Delaware corporation with its principal place of business at 13501 Katy Freeway, Houston, Texas 77079, doing business in the State of New York.

49. Exxon Mobil Corporation, individually and as successor-in-interest to Exxon Corporation and as successor-in-interest to Mobil Corporation (and d/b/a ExxonMobil Refining and Supply Company), is a New Jersey corporation with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas 75039, doing business in the State of New York.

50. ExxonMobil Oil Corporation, individually and formerly known as Mobil Oil Corporation, a subsidiary of Mobil Corporation, is a New York corporation with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas 75039, doing business in the State of New York.

51. Four Star Oil and Gas Co. is a Delaware corporation with its principal place of business in Houston, Texas.

52. Getty Oil Co. is a Delaware corporation.

53. Getty Petroleum Corp. is a Delaware corporation.

54. Getty Petroleum Marketing, Inc. is a Maryland corporation with its principal place of business at 1500 Hempstead Turnpike, East Meadow, New York 1154, doing business in the State of New York.

55. Getty Properties Corp., individually and formerly known as Getty Petroleum Corp., is a Delaware corporation with its principal place of business at 125 Jericho Turnpike, Jericho, New York 11753, doing business in the State of New York.

56. Gulf Limited Liability Partnership is a Delaware limited liability partnership with its principal place of business in Massachusetts.

57. Gulf Oil, LP is a Delaware corporation with its principal place of business at 90 Everett Avenue, Chelsea, Massachusetts 02150, doing business in the State of New York.

58. Hess Energy, Inc. is a Virginia corporation having its principal place of business in New Jersey.

59. Koch Industries, Inc. is a Kansas corporation with its principal place of business at 4111 East 37th Street, Wichita, Kansas, 67220, doing business in the State of New York.

60. Leemilt's Petroleum, Inc. is a domestic corporation.

61. Lyondell Chemical Company, individually and formerly known as Lyondell Petrochemical Company and formerly known as Arco Chemical Company, is a Delaware corporation with its principal place of business at 1221 McKinney Street, Suite 700, Houston, Texas 77010, doing business in the State of New York.

62. Marathon Ashland Petroleum, LLC, a subsidiary of Marathon Oil Corporation, is a Delaware corporation with its principal place of business at 539 South Main Street, Findlay, Ohio 45840, doing business in the State of New York.

63. Marathon Oil Company, individually and formerly known as USX Corporation (f/k/a United States Steel Corporation), is an Ohio corporation with its principal place of business at 5555 San Felipe Road, Houston, Texas 77056-2723, doing business in the State of New York.

64. Marathon Oil Corporation, individually and formerly known as USX Corporation (f/k/a United States Steel Corporation), is a Delaware corporation with its principal place of

business at 5555 San Felipe Road, Houston, Texas 77056-2723, business in the State of New York.

65. Metro Gas Stations is a domestic corporation.

66. Metro Petroleum Corp. is a domestic corporation.

67. Mobil Corporation, a subsidiary of ExxonMobil Corporation, is a Nevada corporation with its principal place of business 5959 Las Colinas Boulevard, Irving, Texas 75039, doing business in the State of New York.

68. Motiva Enterprises, LLC, individually and formerly known as Star Enterprises LLC, is a Delaware corporation with its principal place of business at 1100 Louisiana Drive, Houston, Texas 77210, doing business in the State of New York.

69. Ocean Petroleum, Inc. is a domestic corporation with a principal place of business in Stony Brook, New York.

70. Phillips Petroleum Co. is a Delaware corporation.

71. Premcor Inc. is a Delaware corporation with its principal place of business at 1700 East Putnam Avenue #500, Old Greenwich, Connecticut 06870, doing business in the State of New York.

72. The Premcor Refining Group Inc., individually and formerly known as Clark Refining, is a Delaware corporation with its principal place of business at 8182 Maryland Avenue, St. Louis, Missouri 63105, doing business in the State of New York.

73. Shell Oil Company is a Delaware corporation with its principal place of business at 910 Louisiana Street, Houston, Texas 77002, doing business in the State of New York.

74. Shell Oil Products Company is a Delaware corporation with its principal place of business at One Shell Place, Houston, Texas 77002, doing business in the State of New York.

75. Shell Oil Products Company, LLC is a Delaware corporation with its principal place of business 910 Louisiana Street, Houston, Texas 77002, doing business in the State of New York.

76. Shell Oil Products US is a Delaware corporation.

77. Shell Petroleum, Inc., which owns Shell Oil Company, is a Delaware corporation with its principal place of business 910 Louisiana Street, Houston, Texas 77002, doing business in the State of New York.

78. Shell Trading (US) Company, individually and formerly known as Equiva Trading Company, and also known as Stusco, is a Delaware corporation with its principal place of business at PO Box 3075, Houston, TX 77253, and 500 Dallas Street, Houston, Texas 77002, doing business in the state of New York.

79. Sono Gas and Oil Ltd is a domestic corporation with its principal place of business in Uniondale, New York.

80. Spartan Oil Corp. is a domestic corporation.

81. Spartan Petroleum Corp. is a domestic corporation with its principal place of business in New Hyde Park, New York.

82. Star Supply Petroleum, Inc. is a New Jersey corporation with its principal place of business at 133 Engle Street, Englewood, New Jersey 07631, doing business in the State of New York.

83. Sunoco, Inc., individually and formerly known as Sun Oil Company, and formerly known as Sun Company, Inc., is a Pennsylvania corporation with its principal place of business at 1801 Market Street, 27th Floor, Philadelphia, Pennsylvania 19103, doing business in the State of New York.

84. Sunoco, Inc. (R&M), individually and formerly known as Sun Refining and Marketing Company and formerly known as Sun Company Inc. (R&M), is a Pennsylvania

corporation with its principal place of business at 1801 Market Street, 27th Floor, Philadelphia, Pennsylvania 19103, doing business in the State of New York.

85. Tartan Oil Corp. is a Delaware corporation with its principal place of business in Melville, New York.

86. Texaco, Inc., a subsidiary of ChevronTexaco Corporation, is a Delaware corporation with its principal place of business at 6001 Bollinger Canyon Road, San Ramon, California 94583, doing business in the State of New York.

87. Texaco Refining & Marketing (East), Inc., is a Delaware corporation with its principal place of business at 1111 Bagby Street, Houston, Texas 77002, doing business in the State of New York.

88. Tosco Corporation, individually and also known as Tosco Refining Company, and also known as Tosco Marketing Company, a subsidiary of ConocoPhillips Company, is a Nevada corporation with its principal place of business at 1500 North Priest Drive, Tempe, Arizona 85281, doing business in the State of New York.

89. Ultralene Lubricants American Agip Co. Inc. (a/k/a Ultralene Petroleum Products Corp.)(n/k/a Dom-Chet Co. Inc.), and Dom-Chet, Co., Inc. are domestic corporations with their principal places of business in New York.

90. Unocal Corporation, individually and formerly known as Union Oil Company of California, is a Delaware corporation with its principal place of business at 2141 Rosecrans Avenue, Suite 4000, El Segundo, California 90245, doing business in the State of New York.

91. Valero Energy Corporation, the parent company of Valero Refining and Marketing Company, is a Delaware corporation with its principal place of business at One Valero Place, San Antonio, Texas 78212, doing business in the State of New York.

92. Valero Marketing and Supply Company, a subsidiary of Valero Refining and Marketing Company, is a Delaware corporation with its principal place of business at One Valero Place, San Antonio, Texas 78212, doing business in the State of New York.

93. Valero Refining and Marketing Company is a Delaware corporation with its principal place of business at One Valero Place, San Antonio, Texas 78212, doing business in the State of New York.

FACTUAL OVERVIEW

94. In 1978, the United States Environmental Protection Agency (the "EPA") designated the Long Island aquifer system as one of the first "sole source" aquifers in the country under the Safe Drinking Water Act, 42 USC § 300h-3(e). A "sole source" aquifer is "an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health." The EPA observed that "[s]ince contamination of a ground-water aquifer can be difficult or impossible to reverse, contamination of the aquifer system underlying Nassau and Suffolk Counties, New York, would pose a significant hazard to those people dependent on the aquifer system for drinking purposes.

95. MTBE is a member of a class of chemical compounds called aliphatic ethers, one of whose properties is that they are "hydrophilic," or water-seeking, i.e., they have enhanced solubility in water and chemical attraction to water molecules.

96. MTBE does not occur naturally but is produced from methanol and isobutylene, a by-product of the gasoline-refining process.

97. MTBE is not found in gasoline unless someone adds it.

98. Defendants used and continue to use MTBE as a gasoline additive.

Why Defendants Add MTBE to Gasoline: Profit

99. Sometime after 1979, Defendants started manufacturing, distributing and/or selling gasoline with MTBE in concentrations averaging approximately 2 to 4% in order to boost the octane level in higher grades of gasoline.

100. MTBE was not the only viable option to achieve higher octane in gasoline. Rather, its use reflected a choice and preference of Defendants, to make money from a waste by-product of the gasoline refining process.

101. Since the early 1990's, Defendants have chosen to add MTBE to gasoline in much greater concentration, typically 11-15%, in all grades of gasoline. Defendants claim that MTBE, an oxygenate, helps fuel burn more efficiently to reduce air pollution. Defendants' motivation for including MTBE in gasoline, however, was to boost octane cheaply and increase their own profits. Defendants' use of MTBE as a gasoline additive predates the environmental regulations they invoke to justify their use of MTBE. The Clean Air Act of 1990 required oxygenates, but Defendants lobbied the U.S. EPA to allow the use of MTBE.

102. Ironically, it is now apparent that MTBE does not even deliver Defendants' promise of cleaner air. Contrary to industry assurances, MTBE does little or nothing to reduce such air-polluting emissions as carbon monoxide or smog precursors. A detailed 1998 report commissioned by the State of California concluded that "there is no significant air quality benefit to the use of oxygenates such as MTBE in reformulated gasoline" when compared to alternative non-oxygenated formulations.

103. In May, 1999, the National Research Council of the National Academy of Sciences ("NAS") issued a report concluding that MTBE does little to reduce ozone air pollution and smog.

104. NAS previously had concluded that reduction of carbon monoxide concentrations in the nation's air actually took place before MTBE was added to gasoline as a purported "clean air" oxygenate.

105. In fact, combustion of gasoline containing MTBE in car engines actually increases exhaust emissions of formaldehyde, nitrous oxide and other toxic chemicals, including MTBE itself. MTBE discharged to the air contaminates groundwater because rain returns it to the soil.

Gasoline Containing MTBE Has Widely Contaminated And Continues To Pose A Threat To Groundwater

106. MTBE is greater than ten times more soluble in water than other gasoline constituents and therefore has a stronger affinity for and dissolves more easily in any available water. In technical terms, MTBE has a low octanol water partition coefficient and high solubility in water, particularly as compared to other common gasoline components – benzene, toluene, ethylbenzene and xylene (collectively "BTEX compounds").

107. Whenever gasoline with MTBE leaks, spills, or is otherwise released into the environment, the MTBE races through underground water reservoirs, spreading faster and further than other chemical components contained in gasoline, reaching the water table, and soon contaminating wells that draw from the affected underground aquifers.

108. Even where there is no release of a petroleum product, MTBE may leak or otherwise be released from piping joints, seals or other avenues of escape fro a containment system.

109. In addition to traveling faster and farther than other gasoline constituents, MTBE resists physical, chemical and microbial degradation. As a result, MTBE is slow to break down after it is released into the environment, particularly in the subsurface of the ground. Plumes of MTBE can persist in underground aquifers for many decades, far longer than other components of gasoline.

110. Even in very small quantities, MTBE gives water a foul taste and odor that renders the water unusable and unfit for human consumption. MTBE's taste and odor alone are enough to render previously potable water unfit for consumption.

111. The distressing turpentine-like taste or odor can be detected at concentrations as low as one part per billion ("ppb") or lower.

112. MTBE is also a known animal carcinogen that is linked to many potential human health problems. The U.S. Environment Protection Agency ("EPA") considers MTBE to be a possible human carcinogen.

The Longstanding Prevalence Of Unintended Gasoline Discharges Ensures That Gasoline With MTBE Will Contaminate Groundwater

113. Prior to the introduction by Defendants of MTBE as a gasoline additive, leaking underground storage tanks ("UST") and other gasoline discharges were a known threat to New York's groundwater. The introduction of gasoline containing MTBE in steadily increasing quantities and concentrations exponentially exacerbated the threat to groundwater caused by leaking USTs. Because of MTBE's unique properties, the addition of MTBE to gasoline created an entirely new threat from even very small leaks and spills of gasoline, as well as from rainwater.

114. Given the properties of MTBE and the long history of gasoline spills, leaks and other losses during distribution, sale and use, widespread MTBE contamination of groundwater was and is both inevitable and foreseeable by Defendants.

Defendants Have Known All Along That Mixing MTBE With Gasoline Would Result In Massive Groundwater Contamination

115. At all times relevant to this litigation, Defendants were aware that there is a national crisis involving gasoline leaking from multiple sources, such as USTs. Substantial industry reports, Congressional testimony, and concerns expressed by the EPA show

Defendants' knowledge that the systems used for shipping, storing, pumping, and using gasoline involve leaks and spillages at all links in the gasoline distribution chain.

116. At all times relevant to this litigation, Defendants were aware that thousands of gallons of gasoline enter the soil annually from gasoline-dispensing stations due to consumer and jobber overfills and from leaks, as well as other sources.

117. At all times relevant to this litigation, Defendants were or should have been aware of the potential for additional mishandling events involving gasoline used and or stored by nearly every American adult.

118. At all times relevant to this litigation, Defendants were or should have been aware that additional quantities of MTBE reach the soil in the form of rainfall, as a result of evaporation during transport, storage, and fueling, as described above.

Defendants' Knowledge Of The Threat To Groundwater As A Result Of Unintended Discharges Of Gasoline Mixed With MTBE

119. At all times relevant to this litigation, Defendants were or should have been aware that MTBE's contamination of groundwater was inevitable, as a result of MTBE's water-seeking properties, resistance to biodegradation and bioremediation, and the long history of nationwide gasoline spills, leaks, and other losses during distribution, sale, and use.

120. For example, the American Petroleum Institute ("API"), a trade association representing the domestic petroleum industry, including Defendants, formed a Toxicology Committee in or around 1980. The Toxicology Committee included Defendants Exxon Mobil, Shell, Arco, Tosco and Chevron Texaco.

121. API's Toxicology Committee had a specific program to study MTBE. Meeting minutes make plain that committee members shared information and repeatedly discussed MTBE's propensity to contaminate groundwater. The Committee specifically acknowledged the need for certain toxicological information due to MTBE's propensity

to contaminate groundwater and thus the likelihood of extensive ingestion of MTBE through drinking water.

122. Despite early knowledge and a shared recognition of the need to do ingestion studies on the effects of MTBE, no tests were ever undertaken or completed by Defendants.

123. Defendants possess and have always had knowledge, resources, experience and other advantages which are vastly superior to those of Plaintiff concerning the manufacture, distribution, nature and properties of gasoline in general and MTBE in particular. By virtue of their tremendous economic power and analytical resources, including the employment of scientists such as hydro geologists, chemists, engineers and toxicologists, Defendants have at all times relevant to this litigation been in a position to know the threat which MTBE poses to groundwater.

124. In addition, by virtue of this superior knowledge, and/or by virtue of the Defendants' partial and incorrect statements regarding the nature and impacts of MTBE, Defendants had a duty to disclose the truth and to act in accordance with the truth about MTBE.

Defendants' Early Knowledge Of Specific Instances Of MTBE Contamination Of Groundwater

125. Defendants knew at least as early as 1980 of the impact of MTBE and its contamination of water.

126. In or around October 1980, Defendants learned of a serious incident of MTBE groundwater contamination in Rockaway, New Jersey, which substantiated the threat that MTBE poses to drinking water supplies serving thousands of water consumers. Approximately 4,000 residents of Rockaway tasted MTBE or DIPE (another ether) in water supplied from a municipal well, leading oil industry insiders to further investigation the groundwater threat posed by MTBE.

127. In April 1983, a serious MTBE incident in Jacksonville, Maryland in Baltimore County, came to public attention. Spills or leaks that occurred at least two years earlier at two

different gas stations, one owned by Defendant Exxon, Mobil, the other owned by Defendant Chevron Texaco (then Chevron), created a large underground reservoir of MTBE that fouled the domestic wells of local residents and stalled a planned housing project.

128. Defendants were also aware of two MTBE groundwater contamination events in Liberty, N.Y., and East Patchogue, N.Y., both of which preceded by several years the introduction of gasoline with higher concentrations of MTBE and presaged the now widespread calamity.

129. At the East Patchogue site, spilled gasoline left over from the operation of a filling station whose underground storage tanks had been dug up and removed in 1988 sent a plume of MTBE into Long Island's sole source aquifer. The MTBE plume was detected when the water from a private well 4,000 feet from the old filling station site was rendered undrinkable with 350 ppb of MTBE. By the time trace levels of BTEX were eventually found in wells, the MTBE levels had reached the astounding level of 7,600 ppb.

130. A decade after the spill in East Patchogue, government officials were still tracking the MTBE plume through the aquifer thousands of feet from the site. In contrast, BTEX compounds were found concentrated in the soils and water much closer to the spill site, and the mass of these compounds was observed to be steadily decreasing through biodegradation.

131. The Liberty incident started sometimes before August 1990, when state health officials learned that a sample of the Village of Liberty's public water supply, drawn from local groundwater, tested positive for MTBE.

132. In December 1992, MTBE was again found in Liberty's water at concentrations approximately three times higher than the New York State Department of Health drinking water standard of 50 ppb.

Defendants' Awareness Of The 1986 Garrett Report Specifically Warning Of Inevitable MTBE Contamination Of Groundwater

133. In 1986, Peter Garrett and Marcel Moreau of the Maine Department of Environmental Protection drafted a paper entitled "Methyl Tertiary Butyl Ether as a Ground Water Contaminant" ("the Garrett Report"). The paper described approximately 30 Maine wells contaminated with MTBE. The authors explained that as a result of their experience dealing with the contamination, they learned that: (a) groundwater contaminated with MTBE is difficult to remediate, (b) MTBE is more soluble than the other constituents of gasoline and therefore a plume of MTBE in groundwater will be more extensive than the plume of the other gasoline components, and (c) MTBE has a distressing "turpentine-like" odor in low concentrations.

134. As a result of MTBE's characteristics, the Garrett Report's authors recommended that MTBE be banned as a gasoline additive or at least be stored in double-containing facilities. The paper was to be presented at and published in the proceedings of the "Petroleum Hydrocarbons and Organic Chemicals in Ground Water Conference" sponsored by the National Well Water Association and the API in November of 1986.

135. However, even before it was published, the draft was widely circulated throughout the oil industry. Oil industry representatives, including many of the Defendants, joined forces and acted to pressure the authors to radically revise their negative conclusions and recommendations about MTBE. Even after succeeding in having the report's language softened, Defendants continued to discredit the report.

136. Arco Chemical, which was then a part of Arco, initially became involved in October of 1986, prior to the presentation of the first version of the paper. Arco Chemical provided "data that indicated that many of their theories were incorrect" to the authors of the paper in an attempt to change their opinions. However, despite Arco Chemical's efforts, the authors concluded that "MTBE presented an environmental hazard different to other

gasoline components" and went ahead with their presentation of the paper to the National Well Water Association in November of 1986.

137. On December 23, 1986, a staff person to the Groundwater Technical Task Force ("GTTF") of API forwarded the Garrett Report to members of the GTTF including representatives of Shell, Arco, and Exxon. These individuals were asked to review the Garrett Report and provide comments/critiques. The stated reason was that the article was "of possible grave concern to the oxygenate producers."

138. The comments from the GTTF members culminated in a letter from API to the National Well Water Association, which was to present the paper. The letter states in part:

> The authors' 'recommendations' that MTBE. . .be either banned as gasoline additives or require double-lined storage is clearly a policy statement and not an objective credible scientific conclusion. Further, data presented in this paper as well as those generated by ongoing API research indicate that such a policy is reactionary, unwarranted and counter-productive.

139. However, the API letter to the National Well Water Association in no way refuted the Garrett Report's conclusions regarding MTBE's solubility, MTBE's low odor and taste threshold, the fact that MTBE could travel faster in groundwater than the other gasoline constituents, or the conclusion that MTBE was difficult to remediate. These issues were not even addressed.

140. Defendant BP Corporation (then known as "Amoco") publicly denounced the Garrett Report, stating flatly that the report "isn't true."

Defendants' Internal Documents Demonstrating Their Awareness Of MTBE Contamination Of Groundwater

141. Privately, however, Defendants acknowledged that the major findings of the Garrett Report were correct. For instance, while the oil companies, via the GTTF, attacked the authors of the Garrett Report, saying the paper had a "general lack of technical data to support the rather strong policy statements," behind closed doors, Defendants were

admitting that the authors might in fact be correct. Arco Chemical, in communications to others within the oil industry, admitted that they had no data to refute the Garrett Report's conclusions. For example, a letter dated February 4, 1987, states "we don't have any data to refute comments made in the paper that MTBE may spread farther in a plume or may be more difficult to remove/clean up than other gasoline constituents."

142. On or around May 6, 1987, Mobil's laboratory prepared and circulated a memo based upon a compilation of data on MTBE contamination of groundwater in New York State and elsewhere in the region, including laboratory analyses verifying the presence of MTBE in water samples from three wells in Harrison, New York and four wells in Port Jefferson, New York. In its report, Mobil's laboratory stated: "We agree that MTBE in gasoline will dissolve in groundwater at a faster rate than any gasoline hydrocarbon, including benzene." The report further stated that "[b]ecause of its more frequent occurrence, even when other hydrocarbons are not found, we feel it is important for you to be aware of MTBE. From an environmental and engineering standpoint, you may need to be informed of its presence to assist you in responding effectively to regulatory and remedial requirements."

143. Communications among officials at Defendant Chevron Texaco (Chevron) were similar. A 1987 memo, widely circulated within the company, states: Two considerations impact MTBE. One is potential health risk, and the second is increased solubility over normally regulated constituents of interest, i.e., benzene, toluene and xylene (BTX).

144. MTBE is significantly more soluble in water than BTX. Consequently, the dissolved "halo" from a leak containing MTBE can be expected to extend farther and spread faster than a gasoline leak that does not include MTBE as one of its constituents.

145. Further compounding the problem of increased solubility, MTBE is more difficult to remove from groundwater using current technology (air stripping or carbon adsorption). Because of its lower volatility, MTBE requires more than double the air stripping

capacity to reach a 95 percent reduction. Removal using carbon adsorption is even worse. MTBE breaks through activated carbon four times faster than BTX.

146. In 1992, Shell employees C.C. Stanley, W.G. Rixey, and C.Y. Chiang created a document entitled "MTBE WHITE PAPER - The Impact of MTBE on Groundwater." The purpose of the document was to put together what was known about the movement of MTBE in groundwater and the document was to be circulated internally among the employees of the various Shell companies.

147. According to Shell's MTBE White Paper, MTBE is nearly 25 times more soluble than benzene and therefore, MTBE's plumes are expected to move faster and farther than benzene plumes emanating from a gasoline spill. Further, Shell's MTBE White Paper indicates that MTBE does not biodegrade in the subsurface environment. Finally, Shell's MTBE White Paper indicates that MTBE has a low odor and taste threshold and that "at many locations odor and taste criteria may determine clean-up levels."

148. Shell's MTBE White Paper further states:

> MTBE has had an impact on the groundwater management at only a few Shell marketing terminals and service stations to date. However, as the usage of this oxygenate begins to increase, a stringent clean-up criteria for MTBE will become adopted in more states, we should anticipate increased concerns over how its release to groundwater is managed.

Not surprisingly, this paper was never published outside of Shell.

149. A June 1997 Shell document entitled "Summary of Current MTBE Issues and Status" states:

> MTBE is relatively quite soluble in water (compared to other components in gasoline, like BTEX), and it moves essentially with the groundwater, thus MTBE tends to "lead the plume" whenever there is a gasoline spill or leak. MTBE also has a very low biodegradation potential, which makes it more difficult to remove from ground water than other gasoline components such as BTEX.

150. The threat MTBE poses to groundwater was also discussed in a May 1999 paper by employees of Defendant Chevron entitled "Solving Problems From MTBE Contamination – It's Not Just Regulating Underground Tasks." The document reads:

> [C]oncerns on the mobility and persistence of MTBE in the environment are reinforced by a recent study and anecdotal information discussed at an EPA Blue Ribbon Panel on MTBE in January 1999. This information indicates there is MTBE ground water contamination from small spills of gasoline (e.g., a spill in parking lot, a car accident) – incidences that stand in contrast to known historical causes of MTBE contamination (e.g., point source discharges from leaking underground storage tanks). The physical and chemical properties of MTBE (and thus its mobility and persistence in the environment) differ markedly from other components of gasoline. These differences make MTBE (and other ethers and heavy alcohols) more likely to get into ground water and problematic to contain and clean up when releases occur. . ..

Short of eliminating car accidents, stopping customer overfilling, or other impractical approaches, changes in law or regulation can't fully eliminate releases, nor change the physical and chemical properties of MTBE and other oxygenates when they do get in the environment.

Defendants' Knowledge That No Adequate Toxicity Studies Had Been Done Prior To Defendants' Decision To add MTBE To Gasoline

151. Defendants added MTBE to gasoline even though no long-term cancer studies had been undertaken. Studies showed MTBE caused cancer in animals. It is common knowledge within the scientific community, and Defendants knew, that prior to the introduction of a widely used chemical like MTBE, toxicological tests must first be performed. However, Defendants did not perform the standard toxicological procedures to test the effects of MTBE prior to placing it into the stream of commerce. Instead, Defendants attempted to convince the EPA that health testing of MTBE was not needed.

Despite Knowing That Adding MTBE To Gasoline Inevitably Results In Widespread MTBE Groundwater Contamination, Defendants Conspired To Mislead The EPA And The Public About The Hazards Of Adding MTBE To Gasoline

152. Despite their superior knowledge of the groundwater threat posed by MTBE, Defendants, beginning in the early 1980's, formed various formal and informal task-forces and committees for the purpose of concealing the actual threat of MTBE, facilitating the Defendants' use of MTBE without regard to its impact on Plaintiff and convincing the public and regulators that increasing concentrations of MTBE in gasoline was desirable. Defendants formed these joint task-forces and committees under the auspices of trade organizations such as the API and the Oxygenated Fuels Association ("OFA"). Defendants, as members of these joint task forces and committees, conspired to conceal the risk of MTBE contamination of groundwater and agreed to use MTBE, thereby placing corporate profits above harm to the environment and Plaintiff that was known to them but concealed from the public.

Defendants Mislead The EPA Into Not Testing MTBE Under The Toxic Substances Control Act (TSCA) In The Late 1980s

153. In 1986, the federal Interagency Testing Committee ("ITC"), established pursuant to the Toxic Substances Control Act, recommended testing and review to assess MTBE's health and environment risks. The ITC characterized MTBE as having relatively high water solubility, and stated that MTBE's persistence in groundwater following spills was unknown but that it would likely not be readily biodegradable. The ITC recommended chemical fate monitoring of MTBE to determine the risk MTBE poses to the environment. The ITC also recommended additional medical testing of MTBE and invited written comments. The 1986 Notice credited the Dynamac Corporation for supplying the government with MTBE information.

154. The oil industry, including Defendants, mobilized to convince the EPA that additional testing of MTBE was not needed.

155. On or about December 12, 1986, Defendant Arco, speaking on behalf of and/or with the approval of the other Defendants, responded to the 1986 Notice in an effort to derail further testing of MTBE. ARCO's comments included a critique of the Dynamac Corporation's information review of MTBE, on which the ITC had relied. ARCO stated that its "critique of the CRCS/Dynamac report revealed that some erroneous assumptions had been made that cause the hazards of MTBE to be seriously overestimated." In further comments to the EPA, ARCO stated the following:

> Characteristics - Moderate water solubility is reported. However, an ARCO Technical Bulletin states that MTBE is only slightly soluble in water...'
>
> * * *
>
> The CRSC/Dynamac report states that potential environmental exposure is 'high.' This conclusion is not supported by the available information.
>
> * * *
>
> Exposure from accidental spills of MTBE could occur, but should be regarded as a minimal possibility. The closed nature of the manufacturing and transportation process reduces worker exposure and product loss. Training and safety programs also lower the possibility of accidental spills. Many current programs at EPA and industry are underway to monitor and reduce the possibility of gasoline loss from leaking underground storage tanks. . . .. MTBE losses would be extremely small from this source.
>
> * * *
>
> VI. Environmental Information
>
> As had been reportedly stated, environmental entry would not occur in every state of the gasoline marketing chain. . . . Environmental entry of MTBE from this source would be considerably less than the report indicates. MTBE is only slightly soluble so environmental fate projections based on this assumption will not be correct.

(Emphasis added.) ARCO's comments, made with other Defendants' explicit or implicit approval, were misleading when made, improperly downplaying the risks of MTBE contamination of groundwater and omitting material facts known to Defendants at the time.

156. On or around December 17, 1986, EPA held a Public Focus Meeting to hear comments on the need for additional testing of MTBE. The Minutes of the meeting show that government officials expressed concern over the need to assess the potential for groundwater contamination. The Minutes show that Defendants Arco and Exxon made a presentation to support the industry position that additional medical testing of MTBE was unnecessary. Other Defendants assented to these representations either explicitly or by their silence.

157. In or around early 1987, Defendants formed the "MTBE Committee," with the express and stated purpose, as set forth in a written agreement, of "addressing the environmental, health, safety, legislative and regulatory issues concerning MTBE of importance to the public, and he producers and users of MTBE." The MTBE Committee included Defendants BP Corporation (Amoco), Arco, Chevron Texaco (Chevron and Texaco), Citgo, Exxon Mobil (Exxon), Shell, and Sunoco.

158. The MTBE Committee lauded itself as "being a source of information to MTBE producers, users, the government and the public" and stated that its goal was to "address environmental health and safety issues relating to MTBE . . ., provide technical data to appropriate regulatory agencies and legislative bodies . . ., conduct[ ] and fund[ ] testing of MTBE required under a Toxic Substances Control Action Section 4 Consent Order or Test Rule . . ., [and] make available to interested parties and the general public technical and scientific information relating to the use of MTBE in fuels."

> On January 29, 1987, the MTBE Technical Subcommittee, a subcommittee of the MTBE Committee, had its first meeting. The meeting minutes, circulated February 2, 1987, indicate: [T]he plan

> of attack on the combined response to the EPA on the ITC report is as follows: Since each producer must respond to the EPA before February 12 on the 8A and 8D [sic] questions and many will respond individually to production and economic questions which were also sought by EPA, a letter will be sent by George Dominguez requesting that information requested by the EPA be sent to the MTBE Committee before February 9. A form will be included in George's letter . . . the Technical Committee will then meet on February 19 to combine the three reports from the working groups ad draft a response to the EPA which will then be passed on to the Steering Committee for their approval on February 20... The combined response to the EPA will be submitted by February 27, to be followed shortly thereafter by a formal visit to EPA. Dominguez will meet with EPA and notify them that the MTBE Committee has been formed and will be submitting its overview.

159. Although Defendants were keenly aware that the EPA was interested in obtaining more information about MTBE in groundwater, Defendants were not forthcoming in their responses to the EPA. On February 12, 1987, Arco Chemical, responded to the EPA's request for information about "data gaps" concerning MTBE's environmental and health effects in a letter stating:

> Item D requests more information on the presence and persistence of MTBE in groundwater. We are not aware of any incidents where MTBE contaminated groundwater at manufacturing facilities. Where gasoline containing MTBE is stored at refineries, terminals, or service stations, there is a little information on MTBE groundwater. We feel there are no unique handling problems when gasoline containing MTBE is compared to hydrocarbon-only gasoline.

160. At the same time that Arco Chemical was telling the EPA that MTBE posed no significant environmental or health problems, Arco Chemical admitted to other Defendants that it "had no data to refute the claims made in the Garrett Report that MTBE posed a significant threat of groundwater contamination."

> On or around February 27, 1987, the MTBE Committee submitted written comments drafted to convince the EPA not to require additional health and environmental testing of MTBE. The information provided by Defendants was misleading and false. For example, the Defendants provided information to the EPA representing that MTBE is only slightly soluble in water, that potential environmental exposure is not high, and that MTBE has excellent biodegradation characteristics. The MTBE Committee's Statement added: there is no evidence that MTBE poses any significant risk of harm to health or the environment, that human exposure to MTBE and release of MTBE to the environment is negligible, that sufficient data exists to reasonably determine or predict that manufacture, processing, distribution, use and disposal of MTBE will not have an adverse effect on health or the environment, and that testing is therefore not needed to develop such data. Furthermore, issuance of a test rule requiring long term chronic testing will have a significant adverse environmental impact.

161. The agenda of the MTBE Committee is reflected in the following excerpt from those comments addressed to the issue of medical testing:

162.

> If a test rule is issued requiring chronic testing that will take 3-4 years to complete, great uncertainty will be created as to whether MTBE is a safe fuel additive. As a result, demand for MTBE and expansion of productive capacity is not likely to grow significantly. Refiners will be likely to commit capital to more costly alternative methods of octane enhancement such as isomerization and reformate plans that do not have the environmental benefits of MTBE. Thus, requiring long term testing of MTBE will have a significant adverse environmental and economic impact.

163. The MTBE Committee acknowledged in its February 27, 1987, comments that MTBE had not been the subject of long term chronic health testing, but claimed that such testing was unnecessary. Under the heading "MTBE in Groundwater", it stated that

> [t]he results of a number of acute and sub-chronic health effect studies are presented in the Health Effects Summary of this report. These data suggest that the odor detection level of 700 ppb (approximately 0.7 mg/l) is such that the organoleptic properties of MTBE are sufficient to protect against human ingestion of toxic quantities of MTBE.

164. Defendants sought to be free to represent that MTBE has been shown not to be a health risk without conducting the research needed to reach such a conclusion

165. On the issue of the persistence of MTBE, the MTBE Committee stated that "a Japanese study . . . reports that MTBE in the presence of gasoline has excellent biodegradation characteristics." This misrepresentation concerning the biodegradability of MTBE, which omitted the contrary and more accurate information that MTBE was already known to be recalcitrant to biodegradation, is further evidence of Defendants' practice of concealing from government regulators and the public the actual risk that MTBE poses to groundwater.

166. On or around January 21, 1988, MTBE and/or gasoline manufacturers and distributors, including Defendants BP Corporation (Amoco), Exxon Mobil (Exxon), Sunoco and Chevron Texaco (Texaco) signed a Testing Consent Order with EPA. However, a subsequent notice shows that after extensive negotiation, the oil industry, including Defendants, convinced EPA that additional chemical fate testing was not necessary to determine the environmental risk posed by MTBE. The oil industry, including Defendants, thus succeeded in misrepresenting that the chemical fate of MTBE was sufficiently understood to ensure that MTBE posed no undue risks to the environment and therefore that further testing was unnecessary. Defendants knew or should have know at the time that this representation was false and misleading.

167. The foregoing representations by the MTBE Committee are evidence of Defendants' pattern of exaggerating the environmental benefits of MTBE while understating or concealing MTBE's real environmental hazards, all of which Defendants knew or should have known at the time. The comments also reveal Defendants' plans to forestall all public scrutiny of their decision to increase concentrations of MTBE in gasoline and avoid or obstruct important health and environmental safety research that would have corroborated Defendants' knowledge of MTBE's disastrous effect upon groundwater. In

making and supporting such representations, the Defendants demonstrated their willingness to use any means to place their economic interest above the health, property and well-being of Plaintiff and the American public generally, and intended to (a) continue to use MTBE without regard to its impact on Plaintiff and the environment, and (b) prevent Plaintiff from becoming aware of the contamination and/or impact of contamination from MTBE.

168. Although the MTBE Committee represented to the EPA that the Committee was going to "address environmental issues related to MTBE by a) collecting data from member companies and other source, and b) sponsoring programs to develop data unavailable from other sources," the MTBE Committee did not such thing. The MTBE Committee's Charter statement was intended to mislead the government and the public, including Plaintiff. The MTBE Committee disbanded approximately one year after achieving its goal of avoiding testing.

Defendants Mislead Congress Into Effectively Broadening The Market For MTBE By Including Oxygenate Requirements In The Reformulated Gasoline ("RFG") Program Adopted In the 1990 Amendments To The Clean Air Act

169. Prior to 1990, Congress was preparing to take action to address the Nation's smog problem.

170. During this time frame, the oil industry, including Defendants, became concerned that Congress might consider requiring alternative non-petroleum based fuels.

171. As a result of tremendous lobbying efforts by the industry, including Defendants, Congress adopted the Reformulated Gasoline (RFG) Program as part of the 1990 Amendments to the Clean Air Act. According to the EPA, "The concept of reformulated gasoline (RFG) was originally generated, developed and promoted by industry, not the Environmental Protection Agency (EPA) or other parts of the federal government."

172. In the 1990 Amendments to the Clean Air Act, Congress mandated the use of RFG containing at least 2% oxygen by weight in those areas of the country with the worst

ozone or smog problems. The 1990 Amendments authorized the EPA to mandate that certain areas of the country designated as non-attainment for carbon monoxide (CO) participate in RFG programs. New York is one of the participants in the oxygenated fuel program.

173. In 1992, under the Clean Air Act, the EPA initiated the Oxygenated Fuel Program ("Oxyfuel Program"), which required at least 2.7% oxygen by weight in gasoline in certain metropolitan areas to reduce carbon monoxide emissions during the fall and winter months.

174. The Clean Air Act requires the use of some oxygenate, but it does not require that oxygenate to be MTBE. MTBE became Defendants' "oxygenate of choice" because it was the most inexpensive oxygenate to produce and offered Defendants the highest profit margin of all the oxygenates available. Defendants could manufacture MTBE from their already available refinery by-products and were therefore not forced to purchase a different oxygenate, such as ethanol, from a third-party.

175. Safer, more environmentally sound alternatives were available.

Defendants Misled The Plaintiff And Public, Including All Downstream Gasoline Handlers, About The Hazards Of Gasoline With MTBE

176. Defendants misrepresented the properties of MTBE and withheld information even as they were insisting that no such information existed. Only more recently, through the escalating contamination of groundwater resources, has the public started to become aware of the dangers of MTBE.

177. On April 1 and 2, 1987, George Dominguez of the MTBE Committee gave an oral presentation at a Conference on Alcohols and Octane. Mr. Dominguez represented that "MTBE removal from groundwater is consistent with commercial experience. MTBE gasoline spills have been effectively dealt with." Although the MTBE Committee was represented to have been formed to address environmental issues and to make available

to the general public information regarding MTBE use in fuels, nowhere in the presentation did Mr. Dominguez inform the audience that MTBE is different from the other components of gasoline, that it is resistant to biodegradation, that it is difficult to remediate and that it causes a greater risk of groundwater contamination.

178. In 1994, in response to an article that raised questions about the environmental and health benefits of MTBE, an official with the API, an agent of Defendants, wrote to rebut what he called "an inaccurate and negative view of methyl tertiary butyl ether (MTBE), one of the oxygenates that help make gasoline cleaner burning by reducing carbon monoxide emissions." The letter unambiguously represented to the public and water providers that there was "no basis to question the continued use of MTBE." Given information known to Defendants and API at the time, this statement misrepresented to the general public the safety of gasoline with MTBE and concealed known hazards.

179. As the reality of widespread MTBE groundwater contamination started coming to light, Defendants "greenwashed" the shameful facts. For example, in April 1996, the Oxygenated Fuels Association ("OFA"), an agent of Defendants, published and distributed a pamphlet fashioned "Public Health Issues and Answers" that stated: "On rare occasions, MTBE has been discovered in private drinking water wells where the source of MTBE has been attributed to leaks from nearby underground storage tanks." OFA expressed confidence that federal regulations and industry practices made such contamination largely a thing of the past. This kind of misleading communication utterly failed to alert public officials or persons and entities engaged in the storage, transport, handling, retail sale, use, and response to spills of gasoline (hereinafter referred to as downstream handlers) or the general public to the dangers posed by MTBE and omitted and concealed information required to minimize such dangers.

180. In its April 1996 pamphlet, OFA also suggested that MTBE in groundwater actually provides a public and environmental health service. According to OFA's reasoning,

when MTBE pollutes water it "can serve as an early indicator of gasoline contamination in groundwater, triggering its cleanup and remediation, and limiting the probability of harm from the usual constituents of gasoline."

181. This "canary-in-the-mine" spin, repeated often by Defendants, ring false in light of the fact that MTBE is usually not merely the first, but also the worst or sometimes the only, contaminant imported to groundwater by gasoline. Moreover, MTBE contamination is most often judged to be too costly to clean up.

182. Had Defendants warned downstream handlers and the general public of the known hazards MTBE presented to drinking water supplies, they would have sought alternatives and demanded that Defendants provide environmentally responsible gasoline free of MTBE.

183. Even at this late date, Defendants continue to foster a grave threat to Plaintiff's groundwater with no new safeguards and entirely insufficient warnings, if any.

Defendants Dramatically Increased Their Use Of MTBE In Gasoline After The Creation Of The RFG Program

184. National annual production figures for MTBE reflect the oil industry's decisions to make MTBE its oxygenate of choice: MTBE production increased from 1.5 million barrels in 1980 to 75 million barrels in 1998.

185. Much of the gasoline sold in non-attainment areas under the RFG Program exceeds that Program's minimum 2% or 2.7% oxygenate requirements, and MTBE comprises up to 15% of every gallon used in those areas.

186. Defendants stated shipping high MTBE-content gasoline in gas for sale in certain metropolitan areas in 1992 as part of the Oxyfuel Program.

187. Defendants then made MTBE the additive of choice throughout New York when the public and government agencies sought year-round reductions in air pollution caused by cars.

188. In or around January 1995, Defendants started putting gasoline containing higher levels of MTBE into the stream of commerce throughout New York when moved by market factors and financial considerations to do so. Gas stations owners and pump operators, whom Defendants never warned about the properties of MTBE or gasoline containing MTBE, started selling Defendants' gasoline with greatly elevated concentrations of MTBE.

189. Today most if not all gasoline pumped in the RFG areas of New York is laced with high concentrations (11 to 15 percent) of MTBE. In addition, gasoline containing elevated concentrations of MTBE is often sold at other locations at the discretion of the oil industry, including Defendants.

190. According to the OFA, MTBE accounts for nearly 95 percent of the oxygenates used in New York and MTBE consumption statewide is approximately 17,500 to 21,500 barrels per day. OFA filed a lawsuit on behalf of MTBE manufacturers in an effort to stop the New York State law that bans MTBE starting in the year 2004.

191. In making MTBE their oxygenate of choice, Defendants decided to forego safer oxygenates, such as ethanol. In fact, belatedly, some gasoline sellers have publicly acknowledged that MTBE is neither environmentally safe nor necessary. Getty Marketing, for example, placed full page ads in the New York Times on October 13, 1999, stating:

> Protecting our water supply means making a commitment to doing business in environment-friendly ways. That's what we're doing at Getty. We have replaced MTBE with **ethanol** in our gasoline because it helps clean the air without harming our drinking water.

MTBE Has Had A Predictably Damaging Effect Upon Groundwater And Groundwater Wells

192. One can reach and affect the largest number of Americans by adding something to their gasoline: nearly everybody drives. Before the 1980's, production and sales total for

MTBE were negligible, but by 1996 MTBE ranked second among all volatile organic chemical produced in the United States, with virtually the entire production going into gasoline.

193. Since gasoline containing MTBE at increased levels was introduced in the early 1990s, the United States Geological Survey ("USGS") has reported that MTBE is the second most frequently detected chemical in groundwater in the United States. MTBE-contaminated wells have been found from coast-to-coast with serious incidents in states from New Hampshire to California.

194. For example, large MTBE leaks or spills have occurred in every county in New York. As a result, MTBE has been found in drinking water at levels near or above the state's drinking water standard in communities all over the state including, but not limited to, the towns of Bedford, Cairo, Churubosco, East Patchogue, Elmont, Glen Park, Greenburgh, Hudson Falls, Hyde Park, Laurel, Liberty, Madrid, Mayfield, Middle Island, Mahopac, New Windsor, Norfolk, Orient, Phelps, Pound Ridge, Schodack, Smithtown, West Harrison, West Kill, Cold Spring, Huntington, Patterson, and State Hill. It is found at levels that produce a noxious taste and odor in many more New York communities.

195. The U.S.G.S. annually tests the groundwater not near any known gasoline leaks or spills, and now detects MTBE in over 20% of aquifers tested in places, like New York, where high MTBE-content gasoline is used.

196. In or around November 1999, Governor George Pataki directed New York's Department of Environmental Conservation to lower the state's guidelines for remediation of groundwater containing MTBE from 50 ppb to 10 ppb. This announcement is part of a trend among governments to take action to counter the problem of MTBE contamination of water supplies and the resulting public health threat.

197. A September 15, 1999, report by a special EPA Blue Ribbon Panel states that MTBE is a "threat to the nation's drinking water resources," that MTBE "has caused widespread and

serious contamination;" and that MTBE is found in 21% of ambient groundwater tested in areas where MTBE is used in RFG areas. As stated, the EPA's review of existing information on contamination of drinking water resources by MTBE "indicates substantial evidence of a significant risk to the nation's drinking water supply."

198. In its September 15, 1999, report, the special EPA Blue Ribbon Panel which reviewed the record of MTBE contamination of groundwater recommended substantial reductions in the use of MTBE and some Panel members recommended that it be eliminated entirely. The Panel also recommended accelerating, particularly in those areas where high MTBE-content gasoline is used, assessments of drinking water protection areas required under the Safe Drinking Water Act. The Panel further recommended "a nationwide assessment of the incidence of contamination of private wells by components of gasoline" and "regular water quality testing of private wells." No actual plans or source of funds for such testing exist in any state, including New York.

199. Based upon the recommendations of the Blue Ribbon Panel, the EPA initiated another advance Notice of Proposed Rulemaking regarding MTBE under the TSCA in an effort to eliminate or limit the use of MTBE as a fuel additive in gasoline. Bills presently under consideration in both Houses of the United States Congress would eliminate the use of MTBE.

Because of Defendants' arrangements for the Manufacture And Distribution of Gasoline, It may be difficult to Identify Which Manufacturer's Gasoline Poses a Threat of MTBE Contamination or Has Already Caused MTBE Contamination Of Any Particular Aquifer or Well

200. Gasoline containing MTBE, once it has been released to the environment, lacks characteristics or "a chemical signature" that would enable identification of the refinery or company that manufactured that particular batch.

201. The process of manufacturing and distribution of petroleum products, including gasoline containing MTBE, includes complex arrangements whereby the Defendants trade, barter or otherwise exchange product for delivery throughout New York.

202. A subsurface plume, even if it comes from a single tank or vessel, frequently originates from mixed batches of gasoline coming from different refiners. Gasoline containing MTBE from the various refiners is commingled during transmission by pipelines from refineries to distribution centers. The gasoline at any particular service station comes from many different refiners.

203. The East Patchogue case was typical: even though a source of the MTBE plume (an abandoned service station) was identified, State researchers could not determine the identity or even numbers of manufacturers whose gasoline containing the MTBE, contributed to the resulting MTBE contamination of well water.

204. Because precise identification of the specific manufacturer of any given quantity of gasoline that was the source of MTBE found in a well or groundwater is impossible, Plaintiff must pursue all Defendants, jointly and severally, for those injuries which Defendants have collectively visited upon Plaintiff.

205. Defendants are also jointly and severally liable because they conspired to conceal the true nature of MTBE, to profit from the use of MTBE at Plaintiff's expense, to contaminate Plaintiff's wells, and to avoid liability for such contamination.

Defendants Have Contaminated The Aquifer Within Either The Recharge Area Or Capture Zone Of Plaintiff's Supply Wells

206. The recharge and capture zone of Plaintiff Hempstead's municipal well field is impacted by MTBE contamination from various discharges of MTBE-laden gasoline, including the following spills with the recharge area and capture zone of Hempstead's municipal well field:

- Spill Number 9104939, 375 Clinton Street, Hempstead, New York. Adjacent monitoring wells indicate MTBE contamination of 800 PPB
- Spill Number 8911346, 323 Clinton Street, Hempstead, New York Contaminated soil and ground water observed.

Market Share, Concert Of Action, And Enterprise Liability

207. Defendants in this action are manufacturers that control a substantial share of the market for gasoline containing MTBE in New York and are therefore jointly responsible for the increased threat to groundwater in New York and for causing the damages complained of in this Complaint. Market share liability attaches to all Defendants and the liability of each should be assigned according to its percentage of the market for gasoline containing MTBE in New York at issue in this Complaint. MTBE is fungible; it is impossible to identify the exact defendant who manufactured any given batch of MTBE found free in the environment; and, each of these Defendants participated in Long Island and state-wide and/or national markets for gasoline with MTBE during the relevant time.

208. Concert of action liability attaches to all Defendants each of which participated in a common plan to commit the intentional torts alleged herein and each of which acted tortiously in pursuance of the common plan.

209. Enterprise liability attaches to all of the named Defendants.

210. There are no limitations on liability as set forth in CPLR § 1606 applicable to this action in that one or more of the exceptions set forth in CPLR § 1602 apply, including subsections (5) and/or (11).

Conspiracy

211. Defendants actually knew of the hazards which MTBE posed to groundwater throughout New York including to wells owned by Plaintiff.

212. Beginning in the early 1980s and continuing through the date of the filing of this Complaint, Defendants formed joint task-forces and committees and otherwise colluded for the avowed purpose of providing information about MTBE to the public and to government agencies, but with the true, unlawful purpose of: (a) creating a market for MTBE despite knowledge of the hazards which MTBE poses to groundwater throughout New York; (b) concealing the nature of MTBE, and its impact on Plaintiff and the environment; and (c) maximizing profits in a way Defendants knew would result in the contamination of Plaintiff's ' wells.

213. Defendants carried out their conspiracy by one or more of the following overt acts or omissions:

a. intentionally misrepresenting to the EPA and the public that MTBE was safe and did not pose a risk to groundwater;

b. concealing the dangers of MTBE (including MTBE's adverse fate and transport characteristics and the propensity of MTBE to contaminate groundwater) from the government and the public by, among other means, repeatedly requesting that information about the dangers and health effects of MTBE be suppressed and not otherwise published by third parties and by downplaying any adverse findings related to MTBE;

c. concealing the dangers of MTBE from downstream handlers and consumers;

d. using their considerable resources to fight UST legislation; and

e. collectively deciding to use MTBE rather than other, safer oxygenates to satisfy the requirements of the RFG program because MTBE was the most profitable oxygenate for Defendants to use.

214. As a direct and proximate result of Defendants' above-described conspiracy, MTBE at all times relevant to this litigation has:

a. posed and continues to pose a threat to aquifers and wells;

b. required and/or will require testing and monitoring of Plaintiff's aquifers and wells for MTBE contamination;

c. contaminated Plaintiff's aquifers and/or wells;

d. required or will require remediation of MTBE groundwater contamination or, where remediation is impracticable for Plaintiff, installation of a system to filter out MTBE or procurement of water from alternative sources;

e. diminished and will continue to diminish confidence in, and the use and enjoyment of, Plaintiff's water and property because the aquifers and well water are now less safe than water from other sources; and

f. diminished and will continue to diminish Plaintiff's property value due to actual, impending, or threatened contamination, which is an injury.

FIRST CAUSE OF ACTION
Public Nuisance

215. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated herein.

216. Defendants have manufactured, distributed, marketed and promoted their products in a manner that created or participated in creating a public nuisance that unreasonably endangers or injures the property, health, safety and comfort of the general public and Plaintiff causing inconvenience and annoyance.

217. Defendants, by their negligent, reckless and willful acts and omissions set forth above, have, among other things, knowingly unleashed massive, long-lasting and still spreading contamination of groundwater and drinking water wells, having concealed the threat from all, thereby causing MTBE contamination of groundwater. This contamination has migrated and/or will migrate into the groundwater and Plaintiff's water and production wells and harm is actual, imminent, substantial and impending.

218. By their conduct, Defendants violated and/or threaten to violate public rights to pure drinking water as well as a clean and unpolluted natural environment, including reserves of unpolluted groundwater.

219. Actual, imminent, substantial, threatened and impending harm of gasoline and MTBE contamination caused by Defendants' conduct has caused injury to Plaintiff in the form

of present serious interference with the use, benefit and/or enjoyment of their property in a way that an ordinary, reasonable person would find is a substantial inconvenience and annoyance. MTBE presents a serious health hazard because it is a known animal carcinogen that the EPA considers to be a possible human carcinogen.

220. Defendants' conduct has also injured the property, health, safety and/or comfort of a considerable number of persons.

221. Gasoline and MTBE contamination, both real and immediate, constitutes a current existing as well as prospective public nuisance.

222. Whereas many New York residents rely on water drawn from surface water sources that are not susceptible to the problems caused by MTBE in groundwater, Plaintiff's water and production wells are entirely dependent upon groundwater.

223. Plaintiff's special injuries therefore include: loss of water production capacity and loss of consumer confidence arising out of the increasingly widespread public perception -- based on actual fact -- that the underground aquifers and well water have been rendered less certain, safe and reliable to relative to the other sources of water; various wells belonging to the Plaintiff have been and/or will be contaminated and taken out of service and alternative sources of water were/will be required.

224. Defendants knew or in the exercise of reasonable care should have known that the introduction and use of MTBE in gasoline would and has unreasonably and seriously endangered, threatened, injured and interfered with the ordinary comfort, use and enjoyment of vital groundwater resources relied upon by Plaintiff.

225. As a direct and proximate result of Defendants' acts and omissions creating the above-described nuisance, Plaintiff has and will suffer injuries common to the public at large and additional special injuries from actual and threatened, imminent, substantial and impending contamination of Plaintiff's underground aquifers and the groundwater supplying Plaintiff's production wells.

SECOND CAUSE OF ACTION
Strict Liability For Design Defect And/Or Defective Product

226. Plaintiff realleges and reaffirms each and every allegation set forth in all proceeding paragraphs as if fully restated herein.

227. Defendants during the relevant time period were designers, manufacturers, refiners, formulators, sellers, marketers and suppliers of petroleum products including gasoline with MTBE.

228. As manufacturers, designers, refiners, formulators, distributors, suppliers, sellers and marketers of petroleum products, including gasoline with MTBE, Defendants owed a duty to all persons whom Defendants' petroleum products might foreseeably harm, including Plaintiff, not to market any product which is unreasonably dangerous for its intended and foreseeable uses.

229. When Defendants placed gasoline containing MTBE into the stream of commerce, it was defective and unreasonably dangerous for its intended and foreseeable transportation, storage, handling, and uses for the following reasons, among others:

a. unintended discharges of gasoline are commonplace throughout New York;

b. MTBE evaporates and returns via rainwater to contaminate drinking water supplies;

c. when gasoline containing MTBE is released into the environment, MTBE has a tendency to mix with groundwater and migrate great distances;

d. MTBE is highly soluble in water and many times more soluble in water than the other organic (BTEX) components of gasoline;

e. when gasoline containing MTBE is released into the environment, MTBE persists much longer than the other organic (BTEX) components of gasoline, because MTBE is recalcitrant to biodegradation and bioremediation;

f. very low concentrations of MTBE will ruin the taste and smell of water; and

g. MTBE is a known animal carcinogen and a possible human carcinogen and otherwise unhealthy to ingest.

230. Defendants had knowledge of the risks and failed to use reasonable care in the design of gasoline containing MTBE.

231. Gasoline containing MTBE poses greater dangers to groundwater than would be expected by ordinary persons such as Plaintiff, downstream handlers and the general public exercising reasonable care.

232. The risks which gasoline containing MTBE poses to groundwater outweigh MTBE's utility in boosting the octane level of gasoline and/or supposedly reducing air pollution by increasing the oxygen content of gasoline.

233. Safer alternatives to MTBE exist and have been available to Defendants at all times relevant to this litigation, for the purposes of increasing both the octane level and oxygen content of gasoline. Such sensible alternatives to MTBE include, but are not limited to, ethanol and other "oxygenates" and "octane enhancers."

234. The above-described defects exceeded the knowledge of the ordinary person and by the exercise of reasonable care Plaintiff would not be able to avoid the harm caused by gasoline with MTBE.

235. Gasoline containing MTBE was distributed and sold in the manner intended or reasonably foreseen by the Defendants, or should have been reasonably foreseen by Defendants.

236. Gasoline containing MBTE reached the consumer and the environment in a condition substantially unchanged from that in which it left Defendants'. control.

237. As a direct and proximate result of the unreasonably dangerous and/or defective condition of gasoline containing MTBE and its introduction into the stream of commerce by Defendants, MTBE at all times relevant to this litigation has: posed and continues to

pose a threat to Plaintiff's aquifers, property, and production wells and/or will require additional testing and monitoring of the aquifers and production wells for MTBE contamination; and has contaminated and/or will contaminate Plaintiff's aquifers, property, and production wells or groundwater in the vicinity of Plaintiff's property; and will require remediation of MTBE groundwater contamination or, where remediation is impracticable, installation of a system to filter out MTBE or procurement of water from alternative sources; and has diminished and will continue to diminish consumer confidence in Plaintiff's water and/or Plaintiff as a municipality.

THIRD CAUSE OF ACTION
Failure To Warn

238. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated herein.

239. As manufacturers, designers, distributors, suppliers, sellers and marketers of gasoline containing MTBE, Defendants had a duty not to put on the market a product that poses a serious danger to Plaintiff's aquifers and property and to groundwater that is the source for Plaintiff's production wells without issuing warnings to Plaintiff, the public, public officials and downstream handlers of the risk posed by the product.

240. Defendants knew that gasoline mixed with MTBE would be purchased transported, stored, handled, and used without inspection for defects related to the hazards which MTBE poses to groundwater and wells.

241. At all times relevant to this litigation, Defendants have had actual and/or constructive knowledge of the following facts which rendered MTBE hazardous to groundwater and production wells: unintended discharges of gasoline are commonplace; MTBE evaporates and returns via rainwater to contaminate drinking water supplies; when gasoline containing MTBE is released into the environment, MTBE has a tendency to mix with groundwater and migrate great distances; MTBE is highly soluble in water and

many times more soluble in water than the other organic (BTEX) components of gasoline; when gasoline containing MTBE is released into the environment, MTBE persists much longer than the other organic (BTEX) components of gasoline, because MTBE is recalcitrant to biodegradation and bioremediation; at extremely low concentrations, MTBE can have a distressing and objectionable taste and odor that renders water unusable; MTBE is a known animal carcinogen and a possible human carcinogen and is otherwise unhealthful when ingested; MTBE greatly increases the importance of preventing leaks of gasoline, and makes it necessary to prevent very small quantities of gasoline from escaping containment to avoid groundwater contamination; MTBE increases the need to maintain underground storage tanks, prevent overfills, and respond immediately to the loss of any gasoline containing MTBE; MTBE creates the need to issue warnings to all groundwater users in the area of any spill of gasoline containing MTBE; MTBE creates the need for more regular testing and monitoring of wells for early detection of MTBE; and the foregoing facts relating to the hazards which MTBE poses to groundwater are not the sort of facts which Plaintiff, downstream handlers, and the general public could ordinarily discover or protect themselves against in the absence of sufficient warnings.

242. Defendants breached their duty to warn by reasonably failing to provide warnings concerning any of the facts alleged herein to Plaintiff, public officials, downstream handlers, and/or the general public.

243. Defendants' failure to warn as alleged herein proximately caused reasonably foreseeable injuries to Plaintiff. Plaintiff would have heeded legally adequate warnings and MTBE would not have gained approval in the marketplace for use in gasoline and/or gasoline containing MTBE would have been treated differently in terms of procedures for handling, storage, emergency response and/or environmental clean-up. Since the source

of MTBE in all contaminated wells and groundwater is gasoline, the absence of warnings was the proximate cause of all such contamination.

244. As a direct and proximate result of Defendants' above-described failure to give warnings, MTBE at all times relevant to this litigation has posed and continues to pose an actual, imminent, substantial and impending threat to Plaintiff's water and aquifers and to production wells; required and/or will require additional testing and monitoring of the aquifers and production of wells for MTBE contamination; contaminated and/or will contaminate Plaintiff's aquifers and production wells as well as their property; will require remediation of MTBE groundwater contamination or, where remediation is impracticable, installation of a system to filter out MTBE or procurement of water from alternative sources; and diminished and will continue to diminish consumer confidence in Plaintiff's water.

FOURTH CAUSE OF ACTION
Negligence

245. Plaintiff realleges and affirms each and every allegation set forth in all preceding paragraphs as if fully restated herein.

246. As manufacturers, designers, refiners, formulators, distributors, suppliers, sellers, marketers, shippers and handlers of petroleum products, including gasoline containing MTBE, Defendants owed a duty to Plaintiff as well as to all persons whom Defendants' petroleum products might foreseeably harm to exercise due care not to market or carelessly handle and use any product which is unreasonably dangerous for its intended and foreseeable uses.

247. Defendants had a duty and the financial and technical means to determine whether any latent defects exist in MTBE or gasoline containing MTBE and to warn public officials, downstream handlers and the general public for any such latent defects known to them, their agents and employees.

248. At all times relevant to this litigation, Defendants knew or should have known that unintended discharges of gasoline are commonplace; unintended discharges of gasoline are commonplace; MTBE evaporates and returns via rainwater to contaminate drinking water supplies; when gasoline containing MTBE is released into the environment, MTBE has a tendency to mix with groundwater and migrate great distances; MTBE is highly soluble in water and many times more soluble in water than the other organic (BTEX) components of gasoline; when gasoline containing MTBE is released into the environment, MTBE persists much longer than the other organic (BTEX) components of gasoline, because MTBE is recalcitrant to biodegradation and bioremediation; at extremely low concentrations, MTBE can have a distressing and objectionable taste and odor that renders water unusable; MTBE is a known animal carcinogen and a possible human carcinogen and is otherwise unhealthful when ingested; MTBE greatly increases the importance of preventing leaks of gasoline, and makes it necessary to prevent very small quantities of gasoline from escaping containment to avoid groundwater contamination; MTBE increases the need to maintain underground storage tanks, prevent overfills, and respond immediately to the loss of any gasoline containing MTBE; MTBE creates the need to issue warnings to all groundwater; users in the area of any spill of gasoline containing MTBE; MTBE creates the need for more regular testing and monitoring of wells for early detection of MTBE; and the foregoing facts relating to the hazards which MTBE poses to groundwater are not the sort of facts which Plaintiff, downstream handlers, and the general public could ordinarily discover or protect themselves against in the absence of sufficient warnings.

249. Defendants have negligently breached their duties of due care to Plaintiff, downstream handlers, and the general public by, among other things: using MTBE as an octane-booster and oxygenate; failing to adequately test MTBE prior to its manufacture, distribution and/or sale; failing to adequately test, identify and remediate wells that are

contaminated with MTBE; forming joint committees and task-forces to promote and defend MTBE while concealing the threat which MTBE poses to groundwater; voluntarily undertaking to conduct and report research related to the environmental hazards and purported benefits of gasoline containing MTBE and not conducting and reporting that research in a reasonably truthful manner; failing to design gasoline containing MTBE so that it would not be unreasonably dangerous to downstream handlers and the general public, including Plaintiff; marketing, touting, and otherwise promoting the benefits of gasoline mixed with MTBE without disclosing the truth about the environment and potential health hazards posed by MTBE; failing to eliminate or minimize the harmful impacts and risks posed by gasoline containing MTBE; failing to curtail or reduce MTBE's manufacture and distribution; failing to instruct downstream handlers and the general public about the safe handling and use of gasoline containing MTBE; and failing to inspect, test and take the necessary steps to prevent their gasoline distribution and storage system from releasing MTBE in the general public's water or threatening such release; failing to warn and instruct downstream handlers and the general public about the risks to groundwater posed by gasoline containing MTBE and the necessary precautions and steps to prevent or minimize spills and leaks of gasoline in distribution, storage and used and to remediate such spills and leaks promptly.

250. As a direct and proximate result of one or more of the foregoing negligent acts or omissions on the part of Defendants, MTBE at all times relevant to this litigation has posed and continues to pose an actual, imminent, substantial and impending threat to Plaintiff's water, aquifers and production wells; required and/or will require additional testing and monitoring of Plaintiff's aquifers and production wells for MTBE contamination; contaminated the groundwater system and zone of influence of the area that supplies Plaintiff's production wells; required and will require remediation of gasoline and MTBE contamination of groundwater or, when remediation is

impracticable, installation of a system to filter out MTBE or procurement of alternative water sources; diminished and will continue to diminish consumer confidence in Plaintiff's water.

251.

FIFTH CAUSE OF ACTION
Private Nuisance

252. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated herein.

253. The groundwater system, including the zone of influence in the groundwater that supplies Plaintiff's production wells, has been contaminated by MTBE as a direct and proximate result of the intentional and unreasonable, negligent and reckless conduct of Defendants, all as alleged herein.

254. Gasoline and MTBE contamination caused by Defendants' conduct has damaged Plaintiff's property and business and unreasonably interfered with the use, benefit and enjoyment of Plaintiff's property.

255. As a direct and proximate result of Defendants' acts and omissions creating the above-described nuisance, Plaintiff has suffered injuries from contamination of Plaintiff's underground aquifers and the groundwater supplying Plaintiff's production wells.

SIXTH CAUSE OF ACTION
Deceptive Business Acts And Practices In Violation Of GBL § 349

256. Plaintiff realleges each and every allegation set forth in all preceding paragraphs as if fully restated herein.

257. Defendants are engaged in the business of providing gasoline containing MTBE to consumers, including Plaintiff, in the State of New York.

258. Defendants engaged in materially deceptive and misleading acts and practices in the distribution, marketing and selling of gasoline containing MTBE, including but not limited to: overstating ay environmental benefits of gasoline containing MTBE while neglecting to mention or understating its actual environmental costs; marketing gasoline containing MTBE as a "clean" and environmentally beneficial fuel; misrepresenting the properties of MTBE, including by stating that it is only slightly soluble in water; representing that the product does not pose an unusual threat of groundwater contamination as compared to conventional gasoline; failing to disclose that when gasoline containing MTBE is spilled, the MTBE was far more likely than other gasoline components to get into well water; leading the people to believe that gasoline containing MTBE was safely contained during transport, storage and use; stating that MTBE and gasoline containing MTBE were adequately tested and shown not to pose a health hazard or enhanced risk to the environment while avoiding and discouraging additional testing; and concealing the necessity for wells, particularly those located near sites where gasoline containing MTBE is stored, to be tested regularly for early detection of the presence of MTBE.

259. Defendants' materially deceptive and misleading practices proximately caused injury to Plaintiff, including loss of use and enjoyment of their wells and property, the need for periodic well water testing and monitoring, and the need to obtain a source of uncontaminated water.

SEVENTH CAUSE OF ACTION

Violation Of Navigation Law § 170: (New York Oil Spill Prevention, Control And Compensation Act)

260. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated herein.

261. Navigation Law § 181(1) (Article 12) provides, in relevant part, that: "[a]ny person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup

and removal costs and all direct and indirect damages, no matter by whom sustained, as defined in this section."

262. Defendants are dischargers of petroleum products including gasoline, and gasoline containing MTBE into Plaintiff's aquifers and their production wells

263 As a direct and proximate result of Defendants' discharge, Plaintiff has sustained direct or indirect damages as defined under the Navigation Law, including but not limited to costs associated with investigation tests and studies, engineering, reduction in the value of real and personal property, lost income, clean-up removal and/or relocation, and restoration and/or replacement of natural resources damaged or destroyed.

264. Under the Navigation Law, Defendants are strictly liable to Plaintiff for all such direct and indirect damages sustained.

EIGHTH CAUSE OF ACTION

Negligence Per Se

265. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated herein.

266. Defendants had a duty to comply with applicable laws, regulations, and guidelines applicable to persons managing, storing, using, and distributing gasoline laced with MTBE, including but not limited to New York's Navigation Law.

267. Defendants violated applicable laws and regulations relevant to air, soil and water quality protection intended for the protection of public and private health, safety, property and economic interests.

268. Plaintiff is a member of the group designed to be protected by the above laws and regulations.

269. These violations were a direct and proximate cause of the substantial damages and imminent, substantial and impending harm to Plaintiff's water supply wells, property and other interests.

270. The risk of damages and the imminent, substantial and impending harm to Plaintiff is one of the types of injuries these applicable laws were designed to prevent.

271. Violations of these laws and regulations thereby constitute per se negligence.

272. The amount of damages for some of the injuries will be established at the time of trial.

EIGHTH CAUSE OF ACTION

Trespass

273. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated herein.

274. Plaintiff is, and was at all times material to the Complaint, in lawful possession of the land, property, water, aquifers, and supply wells they owned and occupied.

275. Defendants' actions and omissions complained of caused and constituted actual, imminent, substantial, and threatened unlawful entry, intrusion and trespass onto the aforesaid land, property, water, aquifers, and supply wells.

276. As the result of Defendants' intentional actions and omissions, Plaintiff has expended and will be forced to expend significant resources to safeguard its land, property, water, aquifers, and supply wells, install monitoring, testing, remediating and other equipment, and to perform other activities indefinitely for years and decades into the future.

277. As a result, the MTBE-contaminated soil will act as a continuous source of groundwater contamination of Plaintiff's land, property, water, aquifers, and supply wells for many years.

278. The amount of damages for the injuries will be established at the time of trial.

279. Plaintiff has been damaged by and are entitled to recover damages for such trespass.

PUNITIVE DAMAGES

280. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated herein.

281. The conduct of the Defendants – including but not limited to the following:

a. intentionally misrepresenting the properties of MTBE and gasoline containing MTBE;

b. marketing and promoting gasoline containing MTBE as environmentally safe and beneficial;

c. issuing no warnings and failing to divulge material information concerning the risks of MTBE; and

d. knowing of the certainty of long-lasting water contamination, including specifically high risks to aquifers and production wells in areas using high MTBE-content gasoline, such as Nassau and Suffolk Counties, New York,

caused great harm to Plaintiff and was outrageous and demonstrates a conscious disregard of Plaintiff's safety with implied malice and oppression for which punitive and exemplary damages should be imposed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in its favor against all Defendants herein for an Order:

1. Compelling Defendants to pay for Court-approved sampling and analysis of all water drawn by Plaintiff on a monthly basis over the next 45-year recharge period of the Long Island sole source aquifer.
2. Compelling Defendants to pay to Plaintiff compensatory damages to recover for cleanup of all MTBE contamination throughout Long Island within 5 vertical and horizontal miles of the Long Island sole source aquifer.
3. Compelling Defendants to pay to Plaintiff compensatory damages to recover for lost property values resulting from MTBE contamination or the threat of MTBE contamination, all costs incurred (including, without limitation, costs of clean up and well monitoring), loss of use and enjoyment of water and property, and loss of revenues.
4. Compelling Defendants to issue warnings to all Nassau and Suffolk County gasoline service stations, and compelling Defendants to fund corrective public education, concerning: (1) the extraordinary threat to the Long Island Sole Source Aquifer, wells and groundwater posed by MTBE in gasoline; (2) and the need for extraordinary care in the handling and use of MTBE-laden gasoline, and for immediate clean up in the event of spills of any quantity;
5. Imposing on Defendants a constructive trust and asset freeze or lien upon the profits received arising out of the sale of MTBE or gasoline containing MTBE, in order to assure that the Plaintiff's have an adequate remedy at law;
6. Imposing on Defendants punitive damages in an amount sufficient to punish Defendants and to deter the conduct complained of in the future;
7. Imposing on Defendants interest on the damages according to law;
8. Imposing on Defendants attorneys' fees and the costs and disbursements of this lawsuit; and,
9. Any other and further relief as the Court deems just, proper, and equitable.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury of all claims asserted in this Complaint.

Dated. New York, New York
April 14, 2004

NAPOLI, KAISER, BERN & ASSOCIATES, LLP
Attorneys for Plaintiff
3500 Sunrise Highway
Great River, New York 11739
(631) 224-1133

By: Marc Jay Bern (MJB 6608)
Paul J. Napoli
Thomas W. Raleigh (TWR 0254)

EXHIBIT B

LEXISNEXIS® FILE & SERVE
36593089
E-SERVICE
Mar 21 2011
4:22PM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X

In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation

No. 00 Civ. 1898
MDL No. 1358 (SAS)
M21-88
Master File No. 1:00-1898

---X
VILLAGE OF HEMPSTEAD,

Plaintiff,

-against-

AGIP INC., *et al.*,

Defendants.
---X

CP SERVICE STATION OPERATING CORP. and TARTAN OIL CORP.,

Third-Party Plaintiffs,

-against-

NORTHVILLE INDUSTRIES CORP.,

Third-Party Defendant.

---X

03-CV-10055 (SAS)

FIRST AMENDED THIRD-PARTY COMPLAINT

Defendants and Third-Party Plaintiffs, CP Service Station Operating Corp. ("CP") (an affiliate of Tartan Oil Corp.) and Tartan Oil Corp. ("Tartan") (hereinafter collectively, "Third-Party Plaintiffs"), by their attorneys, DL Rothberg & Associates, P.C., for their First Amended Third-Party Complaint against Third-Party Defendant, Northville Industries Corp. ("Northville"), hereby allege as follows:

Nature of the Action

1. This action arises under §181 of the New York State Navigation Law ("Navigation Law"), the common law of indemnification and contribution and breach of

contract, and seeks reimbursement of the costs of clean up and removal of petroleum contamination, including Methyl Tertiary Butyl Ether ("MTBE"), and of direct and indirect damages caused by Northville's discharge of petroleum onto, or in the vicinity of, the properties previously leased and/or operated and/or owned by Northville and a judicial declaration setting forth the liability of Northville.

Jurisdiction and Venue

2. The United States District Court for the Southern District of New York has determined jurisdiction and venue in the original action.

Parties

3. At all relevant times, CP is a corporation duly organized and existing under the laws of the State of Delaware, with offices located at 233 Walt Whitman Road, Huntington Station, County of Suffolk, State of New York 11746.

4. At all relevant times, Tartan is a corporation duly organized and existing under the laws of the State of Delaware, with offices located at 233 Walt Whitman Road, Huntington Station, County of Suffolk, State of New York 11746.

5. At all relevant times, CP is an affiliate of Tartan.

6. At all relevant times, Northville is a New York corporation, having its principal office located at 25 Melville Park Road, Suite 201, Melville, County of Suffolk, State of New York 11747.

Factual Background

A. The Lease and Remediation

7. On or about February 16, 1954, Sinclair Refining Company ("SRC"), as Lessee, entered into a lease (the "Lease") with Rainbow Petroleum Products, Inc. ("Rainbow"),

as Lessor, of the property located at 345 Old Country Road, located in Section 10, Block 49, Lot 33, Carle Place, County of Nassau, State of New York (the "CP Site").

8. On or about September 30, 1968, SRF was merged into Sinclair Oil Corporation ("SOC").

9. On or about March 4, 1969, SOC was merged into Atlantic Richfield Company ("ARC").

10. On or about March 4, 1969, ARC assigned its interests in the Lease to BP Oil Corporation.

11. On or about December 21, 1973, BP Oil Corporation assigned its interests in the Lease to BP Oil, Inc.

12. On or about May 25, 1974, S&W Holding Co. ("S&W") acquired the leasehold interests in the Lease as lessor and BP Oil Co., Inc. ("BP") acquired the leasehold interests in the Lease as lessee.

13. On or about June 30, 1983, Northville Gasoline Corp. ("NGC") was merged into Third-Party Defendant, Northville Industries Corp. ("Northville"), with Northville being the surviving corporation.

14. On or about October 5, 1983, BP Oil, Inc. assigned its interests in the Lease to NGC and the agreement was duly recorded in the Office of the Clerk of Nassau County.

15. NGC's lease of the CP Site was modified and assigned to Northville.

16. Northville operated the CP Site in 1990 with two (2) 6000 and two (2) 8000 gallon tanks and two (2) pump islands with five (5) pumps.

17. The tanks existing at the CP Site in 1990 were installed in 1974 and were of single wall fiberglass.

18. A tank test failure was reported for the CP Site in 1988.

19. In 1990, on behalf of Northville, ERM Northeast ("ERM") performed an Environmental Assessment of the CP Site (the "1990 Assessment").

20. In connection with the 1990 Assessment, ERM reported that significant groundwater contamination existed at the CP Site.

21. In connection with the 1990 Assessment, ERM reported that concentrations of BTEX in the groundwater at the CP Site justified a regulatory request for additional investigation and remediation.

22. In connection with the 1990 Assessment, ERM reported that the source of the groundwater contamination at the CP Site appeared to be product leakage from the tank field as well as pump islands at the CP Site.

23. In connection with the 1990 Assessment, ERM reported that there were high levels of contamination detected in the groundwater at the CP Site.

24. Based upon the 1990 Assessment, Northville should have made, but did not make, a spill report to the New York State Department of Environmental Conservation (the "NYSDEC") in 1990.

25. The wells at the CP Site were gauged for product in January 1992 and 1/8 inch of gasoline floating product was found in one well.

26. The CP Site was contaminated from spills occurring prior to 1992 and prior to 1990.

27. On January 17, 1992, Northville made a spill report to the NYSDEC and a spill file was opened (No. 91-10976) (the "1992 Spill") based upon the presence of approximately 1/8 inch of free phase gasoline at the CP Site in an observation well (MW-4).

28. Northville retained ERM to investigate, and subsequently perform remediation of the aforesaid release pursuant to a Stipulation and Corrective Action Plan (the "Stipulation") entered into by Northville with the NYSDEC in September 1996.

29. In or about June 1994, Tartan began negotiations to acquire the leasehold rights of Northville to the CP Site.

30. By Assignment Agreement dated April 7, 1995, Northville assigned its leasehold rights to the CP Site to CP (the "Assignment Agreement").

31. By the express terms of the Assignment Agreement, Northville was required to remediate certain environmental conditions at the CP Site related to the 1992 Spill, as well as provide a defense and indemnification to CP for any claims arising out of the 1992 spill incident and relating to the remediation measures that were required to address this condition.

32. Northville retained ERM to oversee the design and installation of a soil venting and air sparging system (the "Remediation System") at the CP Site.

33. The Remediation System was operated on or about between June 1996 and June 1997.

34. Tartan retained its own consulting engineer, Warren Lowry, PE ("Lowry"), to review and monitor the remediation work at the CP Site.

35. On or about June 12, 1997, ERM reported to the NYSDEC that the conditions at the CP Site met the remedial system shutoff criteria set forth in the Stipulation.

36. On or about October 10, 1997, ERM provided the NYSDEC with the results of post-remediation monitoring and requested closure of the 1992 Spill file.

37. By letter dated November 13, 1997, the NYSDEC informed Northville that No Further Action was required at the CP Site and that the 1992 Spill file was removed from

the active spill list.

38. On or about June 9, 1998, Lowry reviewed ERM's post-remediation testing results and noted that levels of MTBE and benzene, toluene, ethylbenzene, and xylenes ("BTEX"), in fact, remained far above acceptable groundwater quality limits.

39. On or about June 9, 1998, Lowry recommended re-testing all ten (10) monitoring wells at the CP Site.

40. Based upon the results of sampling on or about August 6, 1998, Northville (via ERM) wrote to the NYSDEC and summarized the test results attempting to advance the theory that the test data showed a new discharge had occurred in 1997.

41. By letter dated August 13, 1998, counsel for Tartan responded to the ERM claims made to the NYSDEC and disputed the purported theory of Northville that a new spill occurred.

42. As of August 1998 no new discharge or release had occurred at the CP Site since 1992.

43. The underground storage tanks and piping at the CP Site were tested on July 2, 1998, and the results showed the system was tight, and that no surface spills had occurred at the site during CP's tenancy.

44. The increases in MTBE and BTEX were the result of the remaining contamination from the 1992 Spill.

45. The monitoring data as late as August 1997 revealed that the closure criteria were not met.

46. Tartan requested Northville to restart the Remediation System to address the contamination.

47. On or about November 24, 1999, Northville informed the NYSDEC that it would not agree restart operation of the Remediation System.

48. Following Northville's communication with the NYSDEC, the NYSDEC assigned a new spill report number to the CP Site of 99-25412. The NYSDEC spill incident database indicates that the "spill" is still active and open.

49. Investigation and Remediation of the CP Site is ongoing by Third-Party Plaintiffs pursuant to the requirements of the NYSDEC.

B. The MTBE Litigation Claims

50. Tartan and CP were named in lawsuits commenced by various water districts in Nassau and Suffolk Counties in New York State Court in November, 2003, which were removed to Federal Court in December 2003. The federal complaints were served in April, 2004. All of the complaints assert products liability, Navigation Law and other claims in connection with the alleged contamination of drinking water wells with the gasoline additive, MTBE.

51. The CP Site is implicated in the following four (4) actions of Plaintiff water districts: (1) Incorporated Village of Mineola et al v. AGIP Inc. et al; case no. 1:03-cv-10051-SAS-DCF; (2) Westbury Water District v. AGIP Inc. et al; case no. 1:03-cv-10057-SAS-DCF (3) Carle Place Water District v. AGIP Inc. et al; case no. 1:03-cv-10053-SAS-DCF; and (4) Village of Hempstead v. AGIP Inc. et al; case no. 1:03-cv-10055-SAS-DCF (collectively the "MTBE Litigation"). Tartan and CP filed their Answer to Plaintiff's complaints in the MTBE litigation on December 10, 2009.

52. On or about April 12, 2006 and July 10, 2006, Tartan advised Northville of the MTBE Litigation and demanded a defense and indemnification from Northville because

the allegations in the MTBE Litigation specifically relate to the 1992 Spill. Tartan's demand was based upon the indemnification provisions contained in the April 1995 Assignment Agreement.

53. Northville, through its counsel, declined to provide a defense and indemnification.

C. The Terms of the Assignment Agreement

54. The Assignment Agreement requires that Northville undertake remediation of existing contamination at the CP Site so as to cause the CP Site to become in compliance with all applicable environmental laws and standards.

55. Pursuant to the Assignment Agreement, Northville agreed to defend, indemnify and hold CP harmless with respect to the environmental condition of the CP Site.

56. On September 26, 1995, Northville and CP executed an "Addendum to Environmental Agreement" which further defines the environmental condition of the CP Site by referencing additional documents related to the CP Site prior to the date of closing.

57. As of this date, Northville has failed and refused to provide Third-Party Plaintiffs with any defense, indemnification or contribution in connection with the MTBE Litigation and in connection with alleged contamination or remediation at the CP Site.

D. Northville's Service Station Located at 2 Jericho Turnpike, Mineola, New York

58. A gasoline service station located at 2 Jericho Turnpike, Mineola, New York, was formerly owned, leased and/or operated by Northville (the "Northville Mineola Station").

59. Upon information and belief, Northville owned, leased and/or operated the Northville Mineola Station from on or about October 5, 1983 through January 20, 1994.

60. The Northville Mineola Station location is proximate to a Tartan service

station located at 91 Jericho Turnpike, Mineola, New York (the "Tartan Mineola Station").

61. Specifically, the Northville Mineola Station is located approximately 0.23 miles northeast of, and upgradient to, Tartan's Mineola Station.

62. The Northville Mineola Station is also located in close proximity to several of the plaintiff water district water supply wells as follows:

1) 0.34 miles from Mineola Well No. 1;
2) 0.98 miles from Mineola Well No. 3;
3) 1.11 miles from Mineola Well No. 4;
4) 0.62 miles from Mineola Well No. 5;
5) 0.65 miles from Mineola Well No. 6;
6) 0.47 miles from Mineola Well No. 7;
7) 1.18 miles from Carle Place Well No. 2;
8) 1.44 miles from Carle Place Well No. 3;
9) 1.53 miles from Carle Place Well No. 4; and
10) 1.76 miles from Carle Place Well No. 2.

63. There exist at least three documented spill incidents associated with the Northville Mineola Station: 1990 (DEC Spill # 9005159); 1991 (DEC Spill # 9109761; and 1999 (DEC Spill # 9825250). At least two of these spill incidents involved the contamination of groundwater.

64. Northville's operation of the Northville Mineola Station has likely threatened or actually impacted the plaintiff water districts water supply wells.

E. Northville's Distribution of Gasoline Containing MTBE

65. Northville has admitted and disclosed that Northville distributed gasoline to the CP Service Station Site for the period October 5, 1983 through September 26, 1995, and to the Northville Mineola Station for the period October 5, 1985 through January 20, 1994.

66. In the event that Tartan is found to be liable to the plaintiff, Northville may be liable to Tartan as a contributor and/or joint tortfeasor due to its distribution of petroleum

products to the CP Service Station and the Northville Mineola Stations at issue.

FIRST CLAIM FOR RELIEF
(Navigation Law - Strict Liability)

67. Third-Party Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

68. Under § 181 (1) of the Navigation Law, N.Y. Nav. Law § 181(1), "[a]ny person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained."

69. Under § 172(8) of the Navigation Law, N.Y. Nav. Law § 172(8), "Discharge" is defined as "any intentional or unintentional action or omission resulting in the releasing, spilling, leaking pumping, pouring, emitting, emptying or dumping of petroleum into the waters of the State or onto land from which it might flow or drain into said waters . . . ."

70. A "discharger" under the Navigation Law not only includes parties who directly discharge petroleum into State waters, but also those parties whose actions or omissions have contributed in causing the discharge, and therefore Northville may be liable to Tartan due to its distribution of petroleum products to the CP Service Station and the Northville Mineola Stations at issue.

71. Section 181(5) of the Navigation Law provides for a private cause of action against a discharger by any person who sustains damages from a petroleum discharge.

72. Third-Party Plaintiffs have not caused or contributed to any discharges at or in the vicinity of the CP Site.

73. During the period of Northville's ownership, operation, control or use of the CP Site, petroleum, including MTBE and BTEX, leaked, escaped and/or was released from petroleum storage tanks, pipes, conduits, or other equipment and improvements, resulting in

petroleum being released at and in the vicinity of the CP Site.

74. During the period of Northville's ownership, operation, control or use of the Northville Mineola Station, petroleum, including MTBE and BTEX, leaked, escaped and/or was released from petroleum storage tanks, pipes, conduits, or other equipment and improvements, resulting in petroleum being released at and in the vicinity of the Northville Mineola Station and the CP Site.

75. The acts and omissions of Northville resulted in the release of petroleum products into the environment, and constitute "discharge[s]" of petroleum products, as defined by Navigation Law § 172(8).

76. Northville is a discharger pursuant to the New York State Navigation Law with regard to petroleum released at or in the vicinity of the Northville Mineola Station and the CP Site.

77. Northville has failed to adequately remediate contamination at the Northville Mineola Station and the CP Site.

78. Third-Party Plaintiffs have sustained and will in the future sustain damages from petroleum released at and in the vicinity of the Northville Mineola Station and the CP Site.

79. Pursuant to Navigation Law §§ 181(1) and (5), Northville is strictly liable for all cleanup and removal costs, and all direct and indirect damages, incurred by Third-Party Plaintiffs, including but not limited to: costs of the services of environmental consultants and attorneys to investigate or remediate any petroleum contamination at or in the vicinity of the Northville Mineola Station and the CP Site; any damages, costs, interest and penalties which may be recovered by Plaintiff or the State in the underlying action.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment)

80. Third-Party Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth at length herein.

81. Third-Party Plaintiffs have incurred and will continue to incur costs related directly and indirectly to the petroleum discharge onto and in the vicinity of the CP Site including but not limited to cleanup costs, environmental consulting fees and attorneys' fees.

82. Plaintiff is seeking damages and expenses alleged to have been incurred in investigating and remediating MTBE contamination at and/or from the CP Site and/or at the location of their water supply wells.

83. Third-Party Plaintiffs seek a judicial determination as to the rights and other legal relations, including the degree of liability, of each party hereto.

84. Third-Party Plaintiffs seek a declaration that Northville is required to indemnify them for all past, current and future expenses, response costs and other direct and indirect damages including but not limited to, cleanup and removal costs, costs of the services of environmental consultants and attorneys, that are or may be imposed upon Third-Party Defendants in relation to the petroleum discharge.

THIRD CLAIM FOR RELIEF
(Indemnification)

85. Third-Party Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth at length herein.

86. Third-Party Plaintiffs are named in this action as defendants, and the allegations contend that Third-Party Plaintiffs are responsible for certain MTBE contamination as a result of their acts or omissions. Third-Party Plaintiffs have denied these allegations and

contend that they are not liable or responsible for the petroleum contamination alleged in the action.

87. Should the Plaintiffs in the underlying action prove the presence of petroleum contamination as alleged in the complaints, and should Third-Party Plaintiffs be held liable for any damages claimed by the Plaintiffs with respect to the petroleum contamination alleged in the complaints, such petroleum contamination occurred and was caused solely by the acts and omissions of Northville in connection with its ownership, operations, control or use of the facilities at the Northville Mineola Station and the CP Site.

88. Third-Party Plaintiffs demand indemnification and judgment over and against Northville for the full amount of any judgment rendered against Third-Party Plaintiffs and all costs incurred for investigation, cleanup and removal, costs of the services of environmental consultants and attorneys.

FOURTH CLAIM FOR RELIEF
(Contribution)

89. Third-Party Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth at length herein.

90. Third-Party Plaintiffs are named in this action as defendants, and the allegations contend that Third-Party Plaintiffs are responsible for certain MTBE contamination as a result of their acts or omissions.

91. Third-Party Plaintiffs have denied these allegations and contend that they are not liable or responsible for the petroleum contamination alleged in the action.

92. Should the Plaintiffs in the underlying action prove the presence of petroleum contamination as alleged in the complaint, and should Third-Party Plaintiffs be held liable for any damages claimed by the Plaintiffs with respect to petroleum contamination alleged

in the complaint, such petroleum contamination occurred and was caused solely by the acts and omissions of Northville in connection with its ownership, operations, control or use of the facilities at the Northville Mineola Station and the CP Site.

93. Third-Party Plaintiffs demand contribution from Northville in an amount equal to the percentage amount of any judgment against Third-Party Plaintiffs that is attributable to the acts and omissions of Northville.

FIFTH CLAIM FOR RELIEF
(Breach of Contract)

94. Third-Party Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth at length herein.

95. Pursuant to the Assignment Agreement, Northville has an affirmative obligation to remediate the environmental condition that existed at or emanated from the CP Site as of the date of the closing in accordance with all applicable laws and standards.

96. The contamination from the environmental condition emanated from the CP Site and the MTBE and BTEX contamination in the wells alleged in the MTBE Litigation by Plaintiffs is related to the environmental condition.

97. Northville failed its obligation to adequately remediate the environmental condition that existed at or emanated from the CP Site as of the date of the closing in accordance with the applicable laws and standards.

98. By failing to provide Third-Party Plaintiffs with a defense and indemnification based upon the indemnification provisions contained in the April 1995 Assignment Agreement, Northville has breached the Assignment Agreement.

99. As a direct and proximate result of Northville's breach of the Assignment Agreement, Third-Party Plaintiffs have been damaged in an amount to be determined at trial.

Prayer for Relief

WHEREFORE, Third-Party Plaintiffs demand judgment over and against Northville, and any other Northville affiliated station that is found to be relevant during the course of discovery, as follows:

A. On the causes of action for Strict Liability under the Navigation Law, damages in an amount to be proven at trial equal to the costs of cleanup and removal of the petroleum discharge and all direct and indirect damages relating thereto, including attorneys' fees;

B. On the causes of action for Declaratory Judgment for a judicial determination setting forth the liability of each of the parties hereto in connection with the cleanup and removal costs at the CP Site;

C. On the causes of action for Indemnification for damages in an amount to be proven at trial;

D. On the causes of action for Contribution for damages in an amount to be proven at trial;

E. On the causes of action for Breach of Contract for damages in an amount to be proven at trial;

F. Awarding Third-Party Plaintiffs fees, including attorneys' fees, costs and disbursements; and

G. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 21, 2011

DL ROTHBERG & ASSOCIATES, P.C.

By: ______________________

Debra L. Rothberg, Esq.
Attorneys for Third-Party Plaintiffs
1065 Avenue of the Americas, 19th Floor
New York, New York 10018
Phone: (212) 714-1212
Fax: (212) 714-0969

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2011, I caused a true and correct copy of the foregoing Defendants and Third-Party Plaintiffs CP Service Station Operating Corp. and Tartan Oil Corp., First Amended Third-Party Complaint on all Counsel of Record by e-mail, regular mail and electronically via LexisNexis File & Serve.

By: ______________________

Zachary I. Goldsmith

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation

----

VILLAGE OF HEMPSTEAD,

Plaintiff,

-against-

AGIP INC., et al.,

Defendants.

---X

CP SERVICE STATION OPERATING CORP. and TARTAN OIL CORP.,

Third-Party Plaintiffs,

-against-

NORTHVILLE INDUSTRIES CORP.,

Third-Party Defendant

---X

No. 00 Civ. 1898
MDL No. 1358 (SAS) (DCF)
M21-88
Master File No. 1:00-1898
No. 03 Civ. 10055

NORTHVILLE INDUSTRIES CORP.'S ANSWER TO AMENDED THIRD-PARTY COMPLAINT

Third-Party Defendant Northville Industries Corp. ("Northville"), by its attorneys, Herzfeld & Rubin, P.C., as and for its Answer to the Amended Third-Party Complaint of defendants/third-party plaintiffs CP Service Station Operating Corp. ("CP") and Tartan Oil Corp. ("Tartan"), alleges the following upon information and belief:

Nature of the Action

1. Denies the allegations contained in paragraph "1" of the Amended Third-Party Complaint.

Jurisdiction and Venue

2. Denies the allegations contained in paragraph "2" of the Amended Third-Party Complaint on the ground that they state conclusions of law. Northville respectfully refers all questions of law to the Court.

Parties

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "3" of the Amended Third-Party Complaint.

4. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "4" of the Amended Third-Party Complaint.

5. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "5" of the Amended Third-Party Complaint.

6. Admits the allegations contained in paragraph "6" of the Amended Third-Party Complaint.

Factual Background

7. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "7" of the Amended Third-Party Complaint.

8. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "8" of the Amended Third-Party Complaint.

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "9" of the Amended Third-Party Complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "10" of the Amended Third-Party Complaint.

11. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "11" of the Amended Third-Party Complaint.

12. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "12" of the Amended Third-Party Complaint.

13. Admits the allegations contained in paragraph "13" of the Amended Third-Party Complaint.

14. Admits the allegations contained in paragraph "14" of the Amended Third-Party Complaint.

15. Admits the allegations contained in paragraph "15" of the Amended Third-Party Complaint.

16. Admits the allegations contained in paragraph "16" of the Amended Third-Party Complaint.

17. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "17" of the Amended Third-Party Complaint.

18. Admits the allegations contained in paragraph "18" of the Amended Third-Party Complaint.

19. Admits the allegations contained in paragraph "19" of the Amended Third-Party Complaint.

20. Denies the allegations contained in paragraph "20" of the Amended Third-Party Complaint on the ground that the allegations do not accurately reflect the full environmental assessment, and respectfully refers to the "1990 assessment" for its contents.

21. Denies the allegations contained in paragraph "21" of the Amended Third-Party Complaint on the ground that the allegations do not accurately reflect the full environmental assessment, and respectfully refers to the "1990 assessment" for its contents.

22. Denies the allegations contained in paragraph "22" of the Amended Third-Party Complaint on the ground that the allegations do not accurately reflect the full environmental assessment, and respectfully refers to the "1990 assessment" for its contents.

23. Denies the allegations contained in paragraph "23" of the Amended Third-Party Complaint.

24. Denies the allegations contained in paragraph "24" of the Amended Third-Party Complaint.

25. Admits the allegations contained in paragraph "25" of the Amended Third-Party Complaint.

26. Denies the allegations contained in paragraph "26" of the Amended Third-Party Complaint, except admits that BTEX was detected at the CP Site prior to 1992.

27. Admits the allegations contained in paragraph "27" of the Amended Third-Party Complaint.

28. Denies the allegations contained in paragraph "28" of the Amended Third-Party Complaint, except admits that ERM performed remediation relating to the spill file on behalf of Northville.

29. Admits the allegations contained in paragraph "29" of the Amended Third-Party Complaint.

30. Admits the allegations contained in paragraph "30" of the Amended Third-Party Complaint.

31. Denies the allegations contained in paragraph "31" of the Amended Third-Party Complaint and respectfully refers to the Assignment Agreement for its terms and provisions.

32. Admits the allegations contained in paragraph "32" of the Amended Third-Party Complaint.

33. Admits the allegations contained in paragraph "33" of the Amended Third-Party Complaint.

34. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "34" of the Amended Third-Party Complaint.

35. Admits the allegations contained in Paragraph "35" of the Amended Third-Party Complaint.

36. Admits the allegations contained in paragraph "36" of the Amended Third-Party Complaint.

37. Admits the allegations contained in paragraph "37" of the Amended Third-Party Complaint.

38. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "38" of the Amended Third-Party Complaint.

39. Admits the allegations contained in paragraph "39" of the Amended Third-Party Complaint.

40. Denies the allegations contained in paragraph "40" of the Amended Third-Party Complaint, except admits that Northville wrote the NYSDEC on August 6, 1998 and accurately stated that the test results demonstrated that a new discharge had occurred in 1997 during the time in which CP and Tartan operated the CP Site.

41. Denies the allegations contained in paragraph "41" of the Amended Third-Party Complaint insofar as it alleges that the findings constituted a "purported theory," except admits that counsel for Tartan wrote the NYSDEC to dispute the findings.

42. Denies the allegations contained in paragraph "42" of the Amended Third-Party Complaint.

43. Denies the allegations contained in paragraph "43" of the Amended Third-Party Complaint.

44. Denies the allegations contained in paragraph "44" of the Amended Third-Party Complaint.

45. Denies the allegations contained in paragraph "45" of the Amended Third-Party Complaint.

46. Denies the allegations contained in paragraph "46" of the Amended Third-Party Complaint insofar as they purport to intimate that "the contamination" was from a 1992 spill, except admits that Tartan improperly requested that Northville restart remediation.

47. Admits the allegations contained in paragraph "47" of the Amended Third-Party Complaint and states that Northville declined to restart remediation because it had properly remediated the prior environmental condition to the satisfaction and acceptance of the NYSDEC, in accordance with applicable laws, rules and regulations, and pursuant to the Assignment Agreement.

48. Denies the allegations contained in paragraph "48" of the Amended Third-Party Complaint except admits that NYSDEC opened a new spill file, bearing number 99-25412, properly listing CP Service Station as the discharger, and that the

NYSDEC database lists the spill as active due to CP's and Tartan's refusal to remediate the conditions arising therefrom.

49. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "49" of the Amended Third-Party Complaint.

50. Admits the allegations contained in paragraph "50" of the Amended Third-Party Complaint.

51. Denies the allegations contained in paragraph "51" of the Amended Third-Party Complaint, except admits that the CP Site is mentioned in the Complaint in *Carle Place Water District v. AGIP et al.*; Case No. 03-Cv-10053-SAS-DCF.

52. Denies the allegations contained in paragraph "52" of the Amended Third-Party Complaint, except admits that an attorney representing "Leon Petroleum, LLC, successor in interest to C.P. Service" demanded a defense and indemnification of "C.P. Service" only in action no. 03 CV 10053 which was stated to be pending in the United States District Court, Eastern District of New York.

53. Admits the allegations contained in paragraph "53" of the Amended Third-Party Complaint.

54. Denies the allegations contained in paragraph "54" of the Amended Third-Party Complaint, except admits that an Assignment Agreement dated April 7, 1995 was entered into between Northville and CP, and Northville respectfully refers to said Assignment Agreement for its terms and provisions.

55. Denies the allegations contained in paragraph "55" of the Amended Third-Party Complaint, except admits that an Assignment Agreement dated April 7, 1995

was entered into between Northville and CP, and Northville respectfully refers to said Assignment Agreement for its terms and provisions.

56. Admits the allegations contained in paragraph "56" of the Amended Third-Party Complaint.

57. Denies the allegations contained in paragraph "57" of the Amended Third-Party Complaint, except admits that Northville has fulfilled its obligations under the applicable agreements, and that it has not provided, and is not required to provide, third-party plaintiffs with a defense, indemnification or contribution.

58. Admits the allegations contained in paragraph "58" of the Amended Third-Party Complaint.

59. Admits the allegations contained in paragraph "59" of the Amended Third-Party Complaint.

60. Denies the allegations contained in paragraph "60" of the Amended Third-Party Complaint.

61. Denies the allegations contained in paragraph "61" of the Amended Third-Party Complaint.

62. Denies the allegations contained in paragraph "62" of the Amended Third-Party Complaint.

63. Denies the allegations contained in paragraph "63" of the Amended Third-Party Complaint, except admits that NYSDEC Spill numbers 90-05159, 91-09761 and 98-25250 were opened and denies any groundwater contamination emanating from the Northville Mineola station.

64. Denies the allegations contained in paragraph "64" of the Amended Third-Party Complaint.

65. Denies the allegations contained in paragraph "65" of the Amended Third-Party Complaint insofar as they relate to a "CP Service Station Site" which is not defined or identified in the pleading, admits that Northville supplied gasoline to its own service stations at 345 Old Country Road, Carle Place, New York and 2 Jericho Turnpike, Mineola, New York during the respective periods alleged in paragraph "65," and states that Northville never supplied gasoline to the station at 345 Old Country Road, Clare Place, New York after it was sold and transferred to defendant CP Service Station Operating Corp. on September 26, 1995.

66. Denies the allegations contained in paragraph "66" of the Amended Third-Party Complaint.

FIRST CLAIM FOR RELIEF
(Navigation Law – Strict Liability)

67. As and for an answer to paragraph "67" of the Amended Third-Party Complaint, Northville repeats, reiterates and realleges its answers to paragraphs "1" through "66" of the Amended Third-Party Complaint, as if fully set forth herein.

68. Denies the allegations contained in paragraph "68" of the Amended Third-Party Complaint on the ground that the allegations state conclusions of law. Northville respectfully refers all questions of law to the Court.

69. Denies the allegations contained in paragraph "69" of the Amended Third-Party Complaint on the ground that the allegations state conclusions of law. Northville respectfully refers all questions of law to the Court.

70. Denies the allegations contained in paragraph "70" of the Amended Third-Party Complaint on the ground that they state conclusions of law, which are respectfully referred to the Court, except specifically denies the allegation that Northville may be liable to Tartan due to its distribution of petroleum products to the CP Service Station and the Northville Mineola station at issue.

71. Denies the allegations contained in paragraph "71" of the Amended Third-Party Complaint on the ground that the allegations state conclusions of law. Northville respectfully refers all questions of law to the Court.

72. Denies the allegations contained in paragraph "72" of the Amended Third-Party Complaint.

73. Denies the allegations contained in paragraph "73" of the Amended Third-Party Complaint.

74. Denies the allegations contained in paragraph "74" of the Amended Third-Party Complaint.

75. Denies the allegations contained in paragraph "75" of the Amended Third-Party Complaint.

76. Denies the allegations contained in paragraph "76" of the Amended Third-Party Complaint.

77. Denies the allegations contained in paragraph "77" of the Amended Third-Party Complaint.

78. Denies the allegations contained in paragraph "78" of the Amended Third-Party Complaint.

79. Denies the allegations contained in paragraph "79" of the Amended Third-Party Complaint.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment)

80. As and for an answer to paragraph "80" of the Amended Third-Party Complaint, Northville repeats, reiterates and realleges its answers to paragraphs "1" through "79" of the Amended Third-Party Complaint, as if fully set forth herein.

81. Denies the allegations contained in paragraph "81" of the Amended Third-Party Complaint.

82. Denies the allegations contained in paragraph "82" of the Amended Third-Party Complaint and respectfully refers to plaintiffs' Complaints with respect to what is alleged and sought therein.

83. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "83" of the Amended Third-Party Complaint as to what third-party plaintiffs are seeking, respectfully refers to the Amended Third-Party Complaint with respect to what is alleged and sought, and denies any liability on the part of Northville.

84. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "84" of the Amended Third-Party Complaint as to what third-party plaintiffs are seeking, respectfully refers to the Amended Third-Party Complaint as to what is alleged and sought, and denies any liability on the part of Northville.

THIRD CLAIM FOR RELIEF
(Indemnification)

85. As and for an answer to paragraph "85" of the Amended Third-Party Complaint, Northville repeats, reiterates and realleges its answers to paragraphs "1" through "84" of the Amended Third-Party Complaint, as if fully set forth herein.

86. In response to paragraph "86" of the Amended Third-Party Complaint, Northville respectfully refers to the applicable pleadings for their content.

87. Denies the allegations contained in paragraph "87" of the Amended Third-Party Complaint.

88. Denies the allegations contained in paragraph "88" of the Amended Third-Party Complaint, respectfully refers to the Amended Third-Party Complaint as to what is alleged and sought, except denies any liability on the part of Northville.

FOURTH CLAIM FOR RELIEF
(Contribution)

89. As and for an answer to paragraph "89" of the Amended Third-Party Complaint, Northville repeats, reiterates and realleges its answers to paragraphs "1" through "88" of the Amended Third-Party Complaint, as if fully set forth herein.

90. In response to paragraph "90" of the Amended Third-Party Complaint, Northville refers to the applicable pleadings for their content.

91. In response to paragraph "91" of the Amended Third-Party Complaint, Northville refers to the applicable pleadings for their content.

92. Denies the allegations contained in paragraph "92" of the Amended Third-Party Complaint.

93. Denies the allegations contained in paragraph "93" of the Amended Third-Party Complaint, and respectfully refers to the Amended Third-Party Complaint for its content, except denies any liability on the part of Northville.

FIFTH CLAIM FOR RELIEF
(Breach of Contract)

94. As and for an answer to paragraph "94" of the Amended Third-Party Complaint, Northville repeats, reiterates and realleges its answers to paragraphs "1" through "93" of the Amended Third-Party Complaint, as if fully set forth herein.

95. Denies the allegations contained in paragraph "95" of the Amended Third-Party Complaint, except admits that an Assignment Agreement dated April 7, 1995 was entered into between Northville and CP, and Northville respectfully refers to said agreement for its terms and conditions.

96. Denies the allegations contained in paragraph "96" of the Amended Third-Party Complaint.

97. Denies the allegations contained in paragraph "97" of the Amended Third-Party Complaint.

98. Denies the allegations contained in paragraph "98" of the Amended Third-Party Complaint.

99. Denies the allegations contained in paragraph "89" of the Amended Third-Party Complaint.

AS AND FOR A FIRST SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

100. Plaintiff's and third-party plaintiffs' causes of action are time barred by applicable statutes of limitation.

AS AND FOR A SECOND SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

101. If plaintiff and/or third-party plaintiffs sustained damages, said damages were caused and/or contributed to by third-party plaintiffs and/or parties other than this answering defendant.

AS AND FOR A THIRD SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

102. In the event any person or entity liable or claimed to be liable for the injury or damages alleged in this action has been given a release or covenant not to sue, the third-party defendant will be entitled to protection under General Obligation Law § 15-108 and the corresponding reduction of any damages which may be determined to be due against defendant and third-party defendant.

AS AND FOR A FOURTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

103. Plaintiff and/or third-party plaintiffs have failed to join necessary or indispensable parties.

AS AND FOR A FIFTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

104. Plaintiff and/or third-party plaintiffs have failed to mitigate the alleged damages, as a result of which any recovery should be barred or reduced.

AS AND FOR A SIXTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

105. Plaintiff and/or third-party plaintiffs caused, contributed or exacerbated the occurrence(s) and damages claimed, as a result of which recovery should be barred, reduced or limited.

AS AND FOR A SEVENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

106. Third-party defendant is immune from liability in this action pursuant to the Navigation Law (including but not limited to §§ 178-a and 181 et seq.) and/or other laws, rules, regulations and/or legal doctrines.

AS AND FOR A EIGHTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

107. Third-party defendant is immune from liability and/or is otherwise not responsible for the damages by virtue of its prior remediation/response and/or compliance with the Agreements, Plans and requirements of the NYSDEC.

AS AND FOR A NINTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

108. The Amended Third-Party Complaint should be dismissed under the doctrine of estoppel, laches and/or waiver.

AS AND FOR A TENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

109. Third-party defendant did not perform any acts or omissions which caused any contamination, expense or other damages alleged in the Complaint and Amended Third-Party Complaint.

AS AND FOR A ELEVENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

110. The claims against third-party defendant are barred by plaintiff and third-party plaintiffs' failure to afford proper notice and/or opportunity to cure.

AS AND FOR A TWELFTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

111. Plaintiff's and third-party plaintiffs' claims are barred by the doctrine of federal preemption.

AS AND FOR A THIRTEENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

112. At all relevant times, third-party defendant's products and actions complied with and were undertaken pursuant to applicable federal, state, and local laws, rules, regulations and specifications.

AS AND FOR A FOURTEENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

113. Third-party plaintiffs' claims are barred on the grounds that Northville complied with the requirements of NYSDEC with respect to remediation.

AS AND FOR A FIFTEENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

114. The relief sought by plaintiff and third-party plaintiffs is, in whole or in part, within the particular expertise of and/or is or should be addressed by, federal and/or state governments and relevant agencies, and thus this Court should decline to exercise jurisdiction over this matter pursuant to the doctrine of primary jurisdiction.

AS AND FOR A SIXTEENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

115. Plaintiff and third-party plaintiffs have failed to exhaust their administrative remedies.

AS AND FOR A SEVENTEENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

116. The Court lacks subject matter jurisdiction over the claims asserted in the Complaint and Amended Third-Party Complaint.

AS AND FOR A EIGHTEENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

117. The Complaint and Amended Third-Party Complaint fail to state a claim upon which relief may be granted.

AS AND FOR A NINETEENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

118. Plaintiff's and third-party plaintiffs' claims are not ripe and/or legally cognizable by virtue of the fact that they have suffered no loss or injury and there is no imminent threat of any such loss or injury.

AS AND FOR A TWENTIETH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

119. Plaintiff and third-party plaintiffs do not have a legally cognizable injury because the alleged MTBE contamination does not exceed legally permissible and/or accepted limits.

AS AND FOR A TWENTY-FIRST SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

120. Plaintiff and third-party plaintiffs have failed to name the party or parties responsible for the alleged harm.

AS AND FOR A TWENTY-SECOND SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

121. Third-party defendant did not cause or contribute to any actual release of MTBE alleged in the Complaint or Amended Third-Party Complaint.

AS AND FOR A TWENTY-THIRD SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

122. Third-party defendant did not own, control or release any of the petroleum products that are alleged to have caused or threatened contamination to plaintiff's wells.

AS AND FOR A TWENTY-FOURTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

123. Any gasoline product sold or distributed by third-party defendant was properly designed, formulated, prepared and in compliance with all laws and therefore not defective in any respect.

AS AND FOR A TWENTY-FIFTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

124. Third-party defendant complied with all regulations and laws with respect to proper warnings, information and instructions related to all products pursuant to generally recognized standards at the time.

AS AND FOR A TWENTY-SIXTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

125. Any gasoline product sold or distributed by third-party defendant was not defective or unreasonably dangerous when made.

AS AND FOR A TWENTY-SEVENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

126. Plaintiff's claim of public nuisance must be dismissed in that there is no allegation or proof of any intentional or unreasonable acts or omissions.

AS AND FOR A TWENTY-EIGHTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

127. Third-party defendant is not liable for contamination where chemical compounds other than MTBE exceed state action levels or standards and where cleanup would be required regardless of the presence of MTBE.

AS AND FOR A TWENTY-NINTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

128. Any injury, damage or loss sustained by plaintiff or third-party plaintiffs was not reasonably foreseeable.

AS AND FOR A THIRTIETH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

129. Third-party plaintiffs are active dischargers under the Navigation Law and are therefore not entitled to indemnification, contribution and/or the other claims asserted in the Amended Third-Party Complaint.

AS AND FOR A THIRTY-FIRST SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

130. Third-party plaintiff Tartan has no privity of contract or legal relationship with third-party defendant and therefore cannot recover for breach of contract or any of the other claims alleged by Tartan.

AS AND FOR A THIRTY-SECOND SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

131. Third-party defendant had no duty or legal relationship that would give rise to any liability for plaintiff's or third-party plaintiffs' claims.

AS AND FOR A THIRTY-THIRD SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

132. Third-party plaintiffs do not own or possess a legal interest in the CP Site and therefore cannot recover under the claims asserted in the Amended Third-Party Complaint.

AS AND FOR A THIRTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

133. If plaintiff and/or third-party plaintiffs sustained any damages of which they claim, such damages were caused in whole or in part by their own wrongful actions and/or omissions.

AS AND FOR A THIRTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

134. Third-party plaintiffs assumed the risk of any incident(s) or damage(s) alleged in the Amended Third-Party Complaint.

AS AND FOR A THIRTY-SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

135. Third-party defendant did not breach any contracts or agreements applicable to third-party plaintiffs' claims.

AS AND FOR A THIRTY-SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

136. Third-party plaintiffs failed to properly and/or timely request indemnification and/or defense in this action.

AS AND FOR A THIRTY-EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

137. The third-party claims are improper and in violation of the Federal Rules of Civil Procedure.

AS AND FOR A THIRTY-NINTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

138. Third-party defendant did not cause or contribute to any contamination, threatened contamination or damage alleged in the main or third-party actions.

AS AND FOR A FORTIETH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

139. Plaintiff lacks legal standing and/or capacity to maintain this action.

AS AND FOR A FORTY-FIRST SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

140. The third-party claims are barred by applicable contracts and/or agreements.

AS AND FOR A FORTY-SECOND SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

141. Culpable conduct on the part of plaintiff and third-party plaintiffs caused or contributed to the occurrence(s) and/or damage(s) alleged. Plaintiff and third-party plaintiffs are barred from recovery by reasons of the fact that the alleged occurrence(s) and/or damage(s) were the result of culpable conduct on their part, or, in the event plaintiff and/or third-party plaintiffs are entitled to recover, the amount of damages otherwise recoverable should be reduced to the extent to which their culpable conduct contributed to the damages.

AS AND FOR A FORTY-THIRD SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

142. Third-party defendant's liability, if any, is several and not joint pursuant to Article 16 of the New York CPLR and other applicable laws or doctrines.

AS AND FOR A FORTY-FOURTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

143. Any amount that may be awarded to plaintiff must be reduced by the amount received from or indemnified by any collateral source pursuant to New York CPLR 4545(c) and other applicable laws or doctrines.

AS AND FOR A FORTY-FIFTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

144. Third-party defendant cannot be subject to market share, concert of action, "commingled product," alternative or enterprise liability.

AS AND FOR A FORTY-SIXTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

145. Plaintiff and third-party plaintiffs have a plain, common, adequate and speedy remedy at law. The equitable causes of action alleged in the Complaint and Amended Third-Party Complaint are thus barred.

AS AND FOR A FORTY-SEVENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

146. Plaintiff and third-party plaintiffs are barred from seeking strict liability for design defect as any attempt to reexamine the mandatory cost-benefit analysis delegated to and performed by the EPA pursuant to its obligations under the Clean Air Act

(CAA) would be impermissible given that Congress, through Section 211 of the CAA, authorized the EPA, and not the courts, to perform the cost-benefit analysis.

AS AND FOR A FORTY-EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

147. Plaintiff and third-party plaintiffs are not legally entitled to recover the damages or relief sought.

AS AND FOR A FORTY-NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

148. The causes of action in the Complaint and Amended Third-Party Complaint are barred because the relief sought therein would pose unreasonable barriers and substantial burdens on interstate and/or international commerce in violation of the Commerce Clause of the United States Constitution and/or the North American Free Trade Agreement.

AS AND FOR A FIFTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

149. Plaintiff and third-party plaintiffs have failed to state a cause of action for nuisance because they have failed to allege and/or cannot establish that they suffered any particularized injury.

AS AND FOR A FIFTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

150. Plaintiff and third-party plaintiffs may not seek or recover attorneys' fees as an element of relief.

AS AND FOR A FIFTY-SECOND SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

151. Plaintiff and third-party plaintiffs have failed to properly present any claim for attorneys' fees.

AS AND FOR A FIFTY-THIRD SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

152. Any claim for attorneys' fees must be proportioned between the multiple parties which were originally sued in this action.

AS AND FOR A FIFTY-FOURTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

153. The claims set forth in the Complaint and Amended Third-Party Complaint are barred, in whole or in part, by the mootness doctrine.

AS AND FOR A FIFTY-FIFTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

154. The claims set forth in the Complaint and Amended Third-Party Complaint fail, in whole or in part, because of the failure to identify which defendant, if any, proximately caused the alleged harm.

AS AND FOR A FIFTY-SIXTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

155. The damages alleged in the Complaint and Amended Third-Party Complaint are not recoverable against third-party defendant by virtue of intervening and/or superseding acts or omissions of other persons and entities, including but not limited to plaintiff and/or third-party plaintiffs.

AS AND FOR A FIFTY-SEVENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

156. Plaintiff and third-party plaintiffs have failed to allege that third-party defendant's alleged failure to provide an adequate warning proximately caused their injuries.

AS AND FOR A FIFTY-EIGHTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

157. Plaintiff's public nuisance claims must be dismissed because they have failed to allege "special damages," an absolute prerequisite to the assertion of a public nuisance claim.

AS AND FOR A FIFTY-NINTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

158. Plaintiff's claims pursuant to New York General Business Law §349 should be dismissed for failure to plead facts sufficient to show that defendant and/or third-party defendant engaged in "consumer-oriented" conduct that had a broad impact on consumers at large which injured the plaintiff or third-party plaintiffs as within the intended ambit of the statute.

AS AND FOR A SIXTIETH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

159. Plaintiff's claims pursuant to General Business Law §349 should be dismissed because plaintiff is not a consumer under said statute.

AS AND FOR A SIXTY-FIRST SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

160. Plaintiff's claims pursuant to New York General Business Law §349 should be dismissed because the alleged deceptive conduct for which the plaintiff seeks redress does not fall within the ambit of the statute, and plaintiff's injuries did not arise by reasons of any alleged violation of GBL §349.

AS AND FOR A SIXTY-SECOND SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

161. Plaintiff's claims pursuant to New York General Business Law §349 should be dismissed as compliance with the Federal trade Commission Act, 15 U.S.C.A. §45, and/or other statutes, rules and/or regulations, are a complete defense to an action brought under GBL §349.

AS AND FOR A SIXTY-THIRD SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

162. Plaintiff's and third-party plaintiffs' efforts to impose liability on third-party defendant without proof of direct causation violate the Due Process and other clauses of the federal and state constitutions.

AS AND FOR A SIXTY-FOURTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

163. Plaintiff's products liability claims cannot be maintained against defendants and third-party defendant.

AS AND FOR A SIXTY-FIFTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

164. The damages alleged by plaintiff and third-party plaintiffs were not proximately caused by third-party defendant.

AS AND FOR A SIXTY-SIXTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

165. The damages alleged by plaintiff and third-party plaintiff are barred as against third-party defendant for lack of privity.

AS AND FOR A SIXTY-SEVENTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

166. The third-party claims are barred as precluded by, contrary to and/or inconsistent with finding and/or determination of the New York State Department of Environmental Conservation.

AS AND FOR A SIXTY-EIGHTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

167. Third-party plaintiffs cannot maintain and/or prove their claims for indemnification against the third-party defendant.

AS AND FOR A SIXTY-NINTH SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE

168. Plaintiff has not sustained and/or cannot prove any damages.

AS AND FOR A SEVENTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

169. Third-party plaintiffs' claims are barred by virtue of Northville's satisfaction of all requirements of NYSDEC with respect to remediation.

AS AND FOR A SEVENTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

170. Plaintiff's claims should be dismissed in that plaintiff has admitted suffering no damages and that it has taken no action to remediate any alleged damages. In the absence of any injury or threat thereof there is no basis for the claims asserted.

AS AND FOR A SEVENTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

171. Third-party defendant incorporates by reference any and all affirmative defenses alleged by any defendants in this action.

WHEREFORE, Third-Party Defendant Northville Industries Corp. demands entry of judgment dismissing the Amended Third-Party Complaint with prejudice, awarding Northville costs and attorneys' fees, and for such other relief as this Court deems just and proper.

Dated: New York, New York
April 6, 2011

HERZFELD & RUBIN, P.C.
Attorneys for Third-Party Defendant
Northville Industries Corp.

By:______________________
Michael B. Gallub, Esq. (MG-4477)
125 Broad Street
New York, New York 10004
Tel: (212) 471-8500